

Financial Institutions (Recovery of Finances) Ordinance 2001

EXTRAORDINARY

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PART 1

Acts, Ordinances, President's Orders and Regulations

Government of Pakistan

MINISTRY OF LAW, JUSTICE, HUMAN RIGHTS

AND PARLIAMENTARY AFFAIRS

(Law, Justice and Human Rights Division)

Islamabad, the 30th August, 2001

F. No. 2(1)/2001-Pub.—The following Ordinance promulgated by the

President is hereby published for general information :-

ORDINANCE No. XLVI of 2001

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ORDINANCE

To repeal, and, with certain modifications, re-enact, the Banking Companies (Recovery of Loans, Advances, Credits and finances), Act, 1997

WHEREAS it is expedient to repeal and with certain modifications, re-enact the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997, for the purposes hereinafter appearing;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW THEREFORE, in pursuance of the proclamation of Emergency of the fourteenth day of October, 1999 and Provisional Constitution Order No.1 of 1999, read with the Provisional Constitution (Amendment) Order No.9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate its following Ordinance :-

1. Short title, extent and commencement.-

(1) This Ordinance may be called the Financial Institutions (Recovery of Finances) Ordinance, 2001.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.- In this Ordinance unless there is anything repugnant in the subject or context —

a) "financial institution" means and includes —

(i) any company whether incorporated within or outside Pakistan which transacts the business of banking or any associated or ancillary business in Pakistan through its branches within or outside Pakistan and includes a government savings bank, but excludes the State Bank of Pakistan;

(ii) a modaraba or modaraba management company, leasing company, investment bank, venture capital company, financing company, unit trust or mutual fund of any kind and credit or investment institution, corporation or company; and

(iii) any company authorized by law to carry on any similar business, as the Federal Government may by notification in the official Gazette, specify;

(b) "Banking Court" means —

(i) in respect of a case in which the claim does not exceed fifty million rupees or for the trial of offences under this Ordinance, the Court established under section 5; and

(ii) in respect of any other case, the High Court.

(c) "customer" means a person to whom finances has been extended by a financial institution and includes a person on whose behalf a guarantee or letter of credit has been issued by a financial institution as well as a surety or an indemnifier;

(d) "finance" includes —

(i) an accommodation or facility provided on the basis of participation in profit and loss, mark-up or mark-down in price, hire-purchase, equity support, lease, rent-sharing, licensing charge or fee of any kind, purchase and sale of any property including commodities, patents, designs, trade marks and copy-rights, bills of exchange, promissory notes or other instruments with or without buy-back arrangement by a seller, participation term certificate, musharika, morabaha, musswama, istisnah or modaraba certificate, term finance certificate;

(ii) facility of credit or charge cards;

(iii) facility of guarantees, indemnities, letters of credit or any other financial engagement which a financial institution may give issue or undertake on behalf of a customer, with a corresponding obligation by the customer to the financial institution;

(iv) a loan, advance, cash credit, overdraft, packing credit, a bill discounted and purchased or any other financial accommodation provided by a financial institution to a customer;

(v) a benami loan or facility that is, a loan or facility the real beneficiary or recipient whereof is a person other than the person in whose name the loan or facility is advanced or granted;

(vi) any amount due from a customer to a financial institution under a decree passed by a civil court or an award given by an arbitrator; any amount due from a customer to a financial institution which is the subject matter of any pending suit, appeal or revision before any court; any other facility availed by a customer from a financial institution.

(e) "obligation" includes —

(i) any agreement for the repayment or extension of time in repayment of a finance or for its restructuring or renewal or for payment or extension of time in payment of any other amounts relating to a finance or liquidated damages; and

(ii) any and all representations, warranties and covenants made by or on behalf of the customer to a financial institution at any stage, including representations, warranties and covenants with regard to the ownership, mortgage, pledge, hypothecation or assignment of, or other charge on assets or properties or repayment of a finance or payment of any other amount relating to a finance or performance of an undertaking or fulfillment of a promise; and

(iii) all duties imposed on the customer under this Ordinance; and

(f) "rules" means rules made under this Ordinance.

3. Duty of a customer.-

(1) It shall be the duty of a customer to fulfil his obligations to the financial institution.

(2) Where the customer defaults in the discharge of his obligation, he shall be liable to pay, for the period from the date of his default till realization of the cost of funds of the financial institution as certified by the State Bank of Pakistan from time to time, apart from such other civil and criminal liabilities the he may incur under the contract or rules or any other law for the time being in force.

(3) For purposes of this section a judgment against a customer under this Ordinance shall mean that he is in default of his duty under sub-section (1) and the ensuing decree shall provide for payment of the cost of funds as determined under sub-section (2).

4. Ordinance to override other laws.-

The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

5. Establishment of Banking Court.-

(1) The Federal Government may, by notification in the official Gazette, establish as many Banking Courts as it considers necessary to exercise jurisdiction under this Ordinance and appoint a Judge for each of such Courts and where it establishes more Banking Courts than one, it shall specify in the notification the territorial limits within which each of the Banking Courts shall exercise its jurisdiction.

(2) Where more Banking Courts than one have been established to exercise jurisdiction in the same territorial limits, the Federal Government shall define the territorial limits of each such court.

(3) Where more Banking Courts than one have been established in the same or different territorial limits, the High Court may, if it considers it expedient to do so in the interest of justice or for the convenience of the parties or of the witnesses, transfer any case from one Banking Court to another.

(4) A Judge of a Banking Court shall be appointed by the Federal Government after consultation with the Chief Justice of the High Court of the Province in which the Banking Court is established and no person shall be appointed a Judge of a Banking Court unless he has been a Judge of a High Court or is or has been a District Judge.

(5) A Banking Court shall hold its sitting at such places within its territorial jurisdiction as may be determined by the Federal Government.

(6) A Judge of a Banking Court, not being a District Judge, shall be appointed for a term of three years from the date on which he enters upon his office.

(7) The salary, allowances and other terms and conditions of service, of a person appointed as a Judge of a Banking Court shall be the same as that of a Judge of a Banking Court shall be the same as that of a Judge of a High Court.

(8) The Banking Court may, if it so requires, be assisted in technical aspects of banking transactions involved in any case by an amicus curiae who has at least ten years experience of banking at a senior management level in a Financial institution of repute or the State Bank of Pakistan and has the following qualifications, namely:-

(i) a degree in Commerce and Account or in Economics; or

(ii) has completed a course in banking from the Institute of Bankers, Pakistan.

(9) Remuneration of the amicus curiae and the party or parties by whom it will be payable will be determined by the Banking Court keeping in view the circumstances of each case.

6. Resignation and removal of Judges.-

(1) A person not being a District Judge, appointed as a Judge of a Banking Court under section 5 may, by notice in writing under his hand addressed to the Federal Government, resign from his office.

(2) A person appointed as a Judge of a Banking Court under section 5 may be removed from office in consultation with the Chief Justice of the High Court.

7. Powers of Banking Courts.-

(1) Subject to the provisions of this Ordinance a Banking Court shall –

(a) in the exercise of its civil jurisdiction have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908);

(b) in the exercise of its criminal jurisdiction, try offences punishable under this Ordinance and shall, for this purpose have the same powers as are vested in a Court of Sessions under the Code of Criminal Procedure, 1898 (Act V of 1898):

Provided that a Banking Court shall not take cognizance of any offence punishable under this Ordinance except upon a complaint in writing made by a person authorised in this behalf by the financial institution in respect of which the offence was committed.

(2) A Banking Court shall in all matters with respect to which the procedure has not been provided for in this Ordinance, follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908), and the Code of Criminal Procedure, 1898 (Act V of 1898).

(3) All proceedings before a Banking Court shall be deemed to be judicial proceedings within the meaning or sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860), and a Banking Court shall be deemed to be a Court for purposes of the Code of Criminal Procedure 1898 (Act V of 1898).

(4) Subject to sub-section (5), no court other than a Banking Court shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of a Banking Court extends under this Ordinance, including a decision as to the existence or otherwise of a finance and the execution of a decree passed by a Banking Court.

(5) Nothing in sub-section (4) shall be deemed to affect —

(a) the right of a financial institution to seek any remedy before any court or otherwise that may be available to it under the law by which the financial institution may have been established; or

(b) the powers of the financial institution, or jurisdiction of any court such as is referred to in clause (a); or

require the transfer to a Banking Court of any proceedings pending before any financial institution or such court immediately before the coming into force of this Ordinance.

(6) All proceedings pending in any Banking Court constituted under the Banking Companies (Recovery of Loans, Advances, Credits or Finances) Act, 1997 (XV of 1997), including suits for recovery of "loans" that Act shall stand transferred to, or be deemed to be transferred to, and heard and disposed of by, the Banking Court having jurisdiction under this Ordinance. On transfer of proceedings under this sub-section the parties shall appear before the Banking Court concerned on the date previously fixed.

(7) In respect of proceedings transferred to a Banking Court under subsection (6), the Banking Court shall proceed from the stage which the proceedings had reached immediately prior to the transfer and shall not be bound to recall and re-hear any witness and may act on the evidence already recorded or produced before the Court from which the proceedings were transferred.

8. Suit for recovery of written off finances, etc.-

(1) Subject to sub-section (2), and notwithstanding anything contained in the Limitation Act, 1908 (IX of 1908) or any other law, a financial institution may, within three years from the date of coming into force of this Ordinance, file a suit for the recovery of any amount written off, released or adjusted under any agreement, contract, or consent, including a compromise or withdrawal of any suit or legal proceedings or adjustment of a decree between a financial institution and a customer on any day on or after the first day of January, 1990 and before the coming into force of this Ordinance, if it can establish that the amount was written off, released or adjusted for political reasons or considerations other than bona fide business considerations.

No suit under sub-section (1) shall be filed unless its filing has been approved by –

The Board of Directors, in the case of a financial institution incorporated within Pakistan, or the chief executive (by whatever name called or designated) of the financial institution in Pakistan, in the case of a financial institution incorporated outside Pakistan.

9. Procedure of Banking Courts.-

(1) Where a customer or a financial institution commits a default in fulfillment of any obligation with regard to any finance, the financial institution or, as the case may be, the customer, may institute a suit in the Banking Court by presenting a plaint which shall be verified on oath, in the case of a financial institution by the Branch Manager or such other officer of the financial institution as may be duly authorized in this behalf by power of attorney or otherwise.

(2) The plaint shall be supported by a statement of account which in the case of a financial institution shall be duly certified under the Bankers Books Evidence Act, 1891 (XVII of 1891), and all other relevant documents relating to the grant of finance. Copies of the plaint, statement of account and other relevant documents shall be filed with the Banking Court in sufficient numbers so that there is one set of copies for each defendant and one extra copy.

(3) The plaint, in the case of a suit for recovery instituted by a financial institution, shall specifically state —

(a) the amount of finance availed by the defendant from the financial institution;

(b) the amounts paid by the defendant to the financial institution and the dates of payment;
and

(c) the amount of finance and other amounts relating to the finance payable by the defendant to the financial institution upto the date of institution of the suit.

(4) The provisions of section 10 of the Code of Civil Procedure, 1908 (Act V of 1908), shall have no application for and in relation to suits filed hereunder.

(5) On a plaint being presented to the Banking Court, a summons in Form No.4 in Appendix 'B' to the Code of Civil Procedure, 1908 (Act V of 1908) or in such other form as may, from time to time, be prescribed by rules, shall be served on the defendant through the bailiff or process – server of the Banking Court, by registered post acknowledgement due, by courier and by publication in one English language and one Urdu language daily newspaper, and service duly effected in any one of the aforesaid modes shall be deemed to be valid service for purposes of this Ordinance. In the case of service of the summons through the bailiff or process – server, a copy of the plaint shall be attached therewith and in all other cases the defendant shall be entitled to obtain a copy of the plaint from the office of the Banking Court without making a written application but against due acknowledgement. The Banking Court shall ensure that the publication of summons takes place in newspapers with a wide circulation within its territorial limits.

10. Leave to defend.-

(1) In any case in which the summons has been served on the defendant as provided for in sub-section (5) of section 9, the defendant shall not be entitled to defend the suit unless he obtains leave from the Banking Court as hereinafter provided to defend the same; and, in default of his doing so, the allegations of fact in the plaint shall be deemed to be admitted and the Banking Court may pass a decree in favour of the plaintiff on the basis thereof or such other material as the Banking Court may require in the interest of justice.

(2) The defendant shall file the application for leave to defend within thirty days of the date of first service by any one of the modes laid down in sub-section (5) of section 9.

Provided that where service has been validly effected only through publication in the newspapers, the Banking Court may extend the time for filing an application for leave to defend if satisfied that the defendant did not have knowledge thereof.

(3) The application for leave to defend shall be in form of a written statement, and shall contain a summary of the substantial questions of law as well as fact in respect of which, in the opinion of the defendant, evidence needs to be recorded.

(4) In the case of a suit for recovery instituted by a financial institution the application for leave to defend shall also specifically state the following —

(a) the amount of finance availed by the defendant from the financial institution; the amounts paid by the defendant to the financial institution and the dates of payments;

(b) the amount of finance and other amounts relating to the finance payable by the defendant to the financial institution upto the date of institution of the suit;

(c) the amounts of finance and other amounts relating to the finance payable by the defendant to the financial institution upto the date of institution of the suit;

(d) the amount if any which the defendant disputes as payable to the financial institution and facts in support thereof;

Explanation.- For the purposes of clause (b) any payment made to a financial institution by a customer in respect of a finance shall be appropriated first against other amounts relating to the finance and the balance if any, against the principal amount of the finance.

(5) The application for leave to defend shall be accompanied by all the documents which, in the opinion of the defendant, support the substantial questions of law or fact raised by him.

(6) An application for leave to defend which does not comply with the requirements of sub-sections (3), (4) where applicable and (5) shall be rejected, unless the defendant discloses therein sufficient cause for his inability to comply with any such requirement.

(7) The plaintiff shall be given an opportunity of filing a reply to the application for leave to defend, in the form of a replication.

(8) Subject to section 11, the Banking Court shall grant the defendant leave to defend the suit if on consideration of the contents of the plaint, the application for leave to defend and the reply thereto it is of the view that substantial questions of law or fact have been raised in respect of which evidence needs to be recorded.

(9) In granting leave under sub-section (8), the Banking Court may impose such conditions as it may deem appropriate in the circumstances of the case, including conditions as to deposit of cash or furnishing of security.

(10) Where the application for leave to defend is accepted, the Banking Court shall treat the application as a written statement, and in its order granting leave shall frame issues to the substantial questions of law or fact, and, subject to fulfillment of any conditions attached to grant of leave fix a date for recording of evidence thereof and disposal of the suit.

(11) Where the application for leave to defend is rejected or where a defendant fails to fulfill the conditions attached to the grant of leave to defend, the Banking Court shall forthwith proceed to pass judgment and decree in favour of the plaintiff against the defendant.

(12) Where an application for leave to defend has been filed before the coming into force of this Ordinance, the defendant shall be allowed a period of twenty-one days from the date of coming into force of this Ordinance, or from the date of first hearing thereafter, whichever is later, for filing an amended application for leave to defend in accordance with the provisions of this Ordinance.

11. Interim Decree.-

(1) If the Banking Court on a consideration of the contents of the plaint, the application for leave to defend of the defendant and the reply thereto, is of the opinion that the dispute between the parties does not extend to the whole of the claim, or that part of the claim is either undisputed, or is clearly due or that the dispute is mainly limited to a part of the principal amount of the finance or to any other amounts relating to the finance, it shall, while granting leave and framing issues with respect to the disputed amounts, pass an interim decree in respect of that part of the claim which relates to the principal amount and which appears to be payable by the defendant to the plaintiff.

(2) The interim decree passed under sub-section (1) shall, for all purposes including appeal and execution be deemed to be a decree passed under this Ordinance, and any amount covered thereby or recovered in execution thereof shall be adjusted at the time of the final decree:

Provided that it shall be open to the Banking Court notwithstanding the pendency of any appeal, to modify, in part or in whole, or reverse, the terms of the interim decree at the time of the final disposal of the suit and pass such order as it may deem just and proper.

Provided further that neither the Banking Court nor the High Court acting under sub-section (3) of section 22 shall stay execution of an interim decree unless the judgment-debtor deposits in cash with the Banking Court the amount or amounts admitted by the judgment-debtor to be payable to the financial institution under clause (c) of sub-section (4) of section 10, and furnishes security for the balance decretal amount if any, inclusive, in the case of a suit filed by a financial institution, of cost of funds determined under section 3, and other costs.

12. Power to set aside decree.-

In any case in which a decree is passed against a defendant under sub-section (1) of section 10 he may, within twenty-one days of the date of the decree, or where the summons was not duly served when he has knowledge of the decree, apply to the Banking Court for an order to set is aside and if he satisfied the Banking Court that he was prevented by sufficient cause from making an application under section 10, or that the summons was not duly served, the Court shall make an order setting aside this decree against him upon such terms as to costs, deposit in cash or furnishing of security or otherwise as it thinks fit and allow him to make the application within ten days of the order.

13. Disposal of suit.-

(1) A suit in which leave to defend has been granted to the defendant shall be disposed of within ninety days from the day on which leave was granted, and in case proceedings continue beyond the said period the defendant may be required to furnish security in such amount as the Banking Court deems fit, and on the failure of the defendant to furnish such security, the Banking Court shall pass an interim or final decree in such amount as it may deem appropriate.

(2) The requirement of furnishing security under sub-section (1) shall be dispensed with if, in the opinion of the Banking Court, the delay is not attributable to the conduct of the defendant.

(3) Suits before a Banking Court shall come up for regular hearing as expeditiously as possible except in extraordinary circumstances and for reasons to be recorded, a Banking Court shall not allow adjournments for more than seven days.

(4) Where leave to defend is granted and evidence is to be recorded the parties may file affidavits in respect of the examination-in-chief of any witness who is not to be summoned through the Banking Court and where such affidavits are filed, the Banking Court shall give notice thereof to the other contesting parties and on the date fixed for recording evidence shall subject to such modifications as may be required for purposes of production and exhibiting of documents or otherwise in accordance with law treat the affidavit as examination-in-chief and allow the contesting parties an opportunity for cross-examination on the basis thereof.

14. Decree in suits relating to mortgages.-

Where the suit filed by a financial institution before the Banking Court is for the enforcement of a mortgage of immovable property the Banking Court will not be required to pass a preliminary decree as provided in Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), but shall directly pass an interim or final decree for foreclosure or sale.

15. Sale of mortgaged property.-

(1) In this section unless there is anything repugnant in the subject or context. —

(a) "mortgage" means the transfer of an interest in specific immovable property for the purpose of securing the payment of the mortgage money or the performance of an obligation which may give rise to a pecuniary liability;

(b) "mortgage money" means any finance or other amounts relating to a finance, penalties, damages, charges or pecuniary liabilities, payment of which is secured for the time being by the document by which the mortgage is effected or evidenced, including any mortgage deed or memorandum of deposit of title deeds; and

(c) "mortgaged property" means immovable property mortgaged to a financial institution.

(2) In case of default in payment by a customer, the financial institution may send a notice on the mortgagor demanding payment of the mortgage money outstanding within fourteen days from service of the notice, and failing payment of amount within due date, it shall send a second notice of demand for payment of the amount within fourteen days. In case the customer on the due date given in the second notice sent, continuous to default in payment, financial institution shall serve a final notice on the mortgagor demanding the payment of the mortgage money outstanding within thirty days from service of the final notice on the customer.

(3) When a financial institution serves a notice of demand, all the powers of the mortgagor in regard to recovery of rents and profits from the final mortgaged property shall stand transferred to the financial institution until such notice is withdrawn and it shall be the duty of the mortgagor to pay all rents and profits from the mortgaged property to the financial institution.

Provided that where the mortgaged property is in the possession of any tenant or occupier other than the mortgagor, it shall be the duty of such tenant or occupier on receipt of notice in this behalf from the financial institution to pay the rent or lease money or other consideration agreed with the mortgagor to the financial institution.

(4) Where a mortgagor fails to pay the amount as demanded within the period prescribed under sub-section (2), and after the due date given in the final notice has expired, the financial institution may, without the intervention of any court, sell the mortgaged property or any part thereof by public auction and appropriate the proceeds thereof towards total or partial satisfaction of the outstanding mortgage money.

Provided that before exercise of its powers under this sub-section, the financial institution shall cause to be published a notice in one reputable English daily newspaper with wide circulation and one Urdu daily newspaper in the Province in which the mortgaged property is situated, specifying particulars of the mortgaged property, including name and address of the mortgagor, details of the mortgaged property, amount of outstanding mortgage money, and indicating the intention of the financial institution to sell the mortgaged property. The financial institution shall also send such notices to all persons who, to the knowledge of the financial institution, have an interest in the mortgaged property as mortgagees.

(5) The financial institution shall be entitled, in its discretion, to participate in the public auction, and to purchase the mortgaged property at the highest bid obtained in the public auction.

(6) Where the mortgagor or his agent or servant or any person put in possession by the mortgagor or on account of the mortgagor does not voluntarily give possession of the mortgaged property sought to be sold or sought to be purchased or purchased by the financial institution, a Banking

Court on application of the financial institution or purchaser shall put the financial institution or purchaser, as the case may be, in possession of the mortgaged property in any manner deemed fit by it:

Provided that the Banking Court may not order eviction of a person who is in occupation of the mortgaged property or any part thereof under a bona fide lease, except on expiry of the period of the lease, or on payment of such compensation as may be agreed between the parties or as may be determined to be reasonable by the Banking Court.

Explanation.- (1) Where the lease is created after the date of the mortgage and it appears to the Banking Court that the lease was created so as to adversely affect the value of the mortgaged property or to prejudice the rights and remedies of the financial institution, it shall be presumed that the lease is not bona fide unless proved otherwise.

(7) For purposes of execution and registration of the sale deed in respect of the mortgaged property, the financial institution shall be deemed to be the duly authorized attorney of the mortgagor and a sale deed executed and presented for registration by duly authorized attorneys of the financial institution shall be accepted for such purposes by the Registrar and Sub-Registrar under the Registration Act, 1908 (XVI of 1908).

(8) Upon execution and registration of the sale deed of the mortgaged property in favour of the purchaser all rights in such mortgaged property shall vest in the purchaser free from all encumbrances and the mortgagor shall be divested of any right, title and interest in the mortgaged property.

(9) Net sale proceeds of the mortgaged property, after deducting all expenses of sale or expenses incurred in any attempted sale, shall be distributed ratably amongst all mortgagees in accordance with their respective rights and priorities in the mortgaged property. Any surplus left, after paying in full all the dues of mortgagees shall be paid to the mortgagor.

(10) A financial institution which has sold mortgaged property in exercise of powers conferred herein shall file proper accounts of the sale proceeds in a Banking Court within thirty days of the sale.

(11) All disputes relating to the sale of the mortgaged property under this section including disputes amongst mortgagees in respect of distribution of the sale proceeds, shall be decided by the Banking Court.

(12) Neither the Banking Court nor the High Court shall grant an injunction restraining the sale or proposed sale of mortgaged property unless –

(a) it is satisfied that no mortgage in respect of the immovable property has been created; or

(b) all moneys secured by mortgage of the mortgaged property have been paid; or

(c) the mortgagor or objector deposits in the Banking Court in cash the outstanding mortgage money.

(13) The rights and remedies provided under this section are in addition to, and not in lieu of, any other rights or remedies a financial institution may have under this Ordinance.

(14) The provisions contained in this section shall have effect notwithstanding anything contained in this Ordinance.

16. Attachment before judgment, injunction and appointment of Receivers.-

(1) Where the suit filed by a financial institution is for the recovery of any amount through the sale of any property which is mortgaged, pledged, hypothecated, assigned, or otherwise charged or which is the subject of any obligation in favour of the financial institution as security for finance or for or in relation to a finance lease, the Banking Court may, on application by the financial institution, with a view to preventing such property from being transferred, alienated, encumbered, wasted or otherwise dealt with in a manner which is likely to impair or prejudice the security in favour of the financial institution, or otherwise in the interest of justice —

(a) restrain the customer and any other concerned person from transferring, alienating, parting with possession or otherwise encumbering, charging, disposing or dealing with the property in any manner;

(b) attach such property;

(c) transfer possession of such property to the financial institution; or

(2) An order under sub-section (1) may also be passed by the Banking Court in respect of any property held benami in the name of an ostensible owner whether acquired before or after the grant of finance by the financial institution.

(3) In cases where a customer has obtained property or financing through a finance lease, or has executed an agreement in connection with a mortgage, charge or pledge in terms whereof the financial institution is authorized to recover or take over possession of the property without filing a suit, the financial institution may, at its option:

(a) directly recover the same if the property is movable; or

(b) file a suit hereunder and the Banking Court may pass an order at any time, either authorizing the financial institution to recover the property directly or with the assistance of the court:

Provided that in the event the financial institution wrongly or unjustifiably exercises the direct power of recovery hereunder it shall be liable to pay such compensation to the customer as may be adjudged by the Banking Court in summary proceedings to be initiated on the application of the customer and concluded in thirty days.

(4) Nothing in sub-sections (1) to (3) shall affect the powers of the Banking Court under Order XXXVIII Rules 5 and 6 of the Code of Civil Procedure, 1908 (Act V of 1908) to attach before judgment any property other than property mentioned in sub-section (1).

17. Final Decree.-

(1) The final decree passed by a Banking Court shall provide for payment from the date of default of the amounts found to be payable on account of the default in fulfillment of the obligation and for costs including in the case of a suit filed by a financial institution cost of funds determined under section 3.

(2) The Banking Court may, at the time of passing a final decree, also pass an order of the nature contemplated by sub-section (1) of section 16 to the extent of the decretal amount.

18. Banking Documents.-

(1) No financial institution shall obtain the signature of a customer on banking document which contains blanks in respect of important particulars including the date, the amount, the property or the period of time in question.

(2) Finance agreements executed by or on behalf of a financial institution and a customer shall be duly attested in the manner laid down in Article 17 of the Qanun-e-Shahadat Order, 1984 (P. O. 10 of 1984);

(3) Nothing contained in sub-section (1) and (2) shall affect the validity of any document executed prior to the date of enforcement of this Ordinance;

(4) Notwithstanding any thing contained in this section or any other law, the Banking Court shall not refuse to accept in evidence any document creating or purporting to create or indicating the creation of a mortgage, charge, pledge or hypothecation in relation to any property or assumption of any obligation by a customer, guarantor, mortgagor or otherwise merely because it is not duly stamped or is not registered as required by any law or is not attested or witnessed as required by Article 17 of the Qanun-e-Shahadat Ordinance, 1984 (P. O. 10 of 1984) and no such document shall be impoundable by the Banking Court or any other court or authority:

Provided that nothing contained in this sub-section shall operate to defeat the legal rights of a bona fide purchaser for value without notice of a document which ought to have been registered.

19. Execution of decree and sale with or without intervention of Banking Court.-

(1) Upon pronouncement of judgment and decree by a Banking Court, the suit shall automatically stand converted into execution proceedings without the need to file a separate application and no fresh notice need be issued to the judgment-debtor in this regard. Particulars of the mortgaged, pledged or hypothecated property and other assets of the judgment-debtor shall be filed by the decree-holder for consideration of the Banking Court and the case will be heard by the Banking Court for execution of its decree on the expiry of 30 days from the date of pronouncement of judgment and decree:

Provided that if the record of the suit is summoned at any stage by the High Court for purposes of hearing an appeal under section 22 or otherwise, copies of the decree and other property documents shall be retained by the Banking Court for purposes of continuing the execution proceedings.

(2) The decree of the Banking Court shall be executed in accordance with the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) or any other law for the time being in force or in such manner as the Banking Court may at the request of the decree-holder consider appropriate, including recovery as arrears of land revenue.

Explanation.- The term assets or properties in sub-section (2) shall include any assets and properties acquired benami in the name of an ostensible owner.

(3) In cases of mortgaged, pledged or hypothecated property, the financial institution may sell or cause the same to be sold with or without the intervention of the Banking Court either by public auction or by inviting sealed tenders and appropriate the proceeds towards total or partial satisfaction of the decree. The decree passed by a Banking Court shall constitute and confer sufficient power and authority for the financial institution to sell or cause the sale of the mortgaged, pledged or hypothecated property together with transfer of marketable title and no further order of the Banking Court shall be required for this purpose.

(4) Where a financial institution wishes to sell mortgaged, pledged or hypothecated property by inviting sealed tenders, it shall invite offers through advertisement in one English and one Urdu newspaper which are circulated widely in the city in which the sale is to take place giving not less than thirty days time for submitting offers. The sealed tenders shall be opened in the presence of the tenders or their representatives or such of them as attend:

Provided that the financial institution shall be entitled in its discretion, to purchase the property at the highest bid received.

(5) The provisions of sub-sections (5), (6), (7), (8), (9), (10), (11) and (12) of section 15 shall, mutatis mutandis, apply to sales of mortgaged, pledged or hypothecated property by a financial institution in exercise of its powers conferred by sub-section (3).

(6) The Banking Court and the financial institution shall be entitled to seek the services and assistance of the police or security agency in the exercise of powers conferred by this section.

(7) Notwithstanding anything contained in the Code of Civil Procedure 1908 (Act V of 1908), or any other law for the time being in force. —

(a) the Banking Court shall follow the summary procedure for purposes of investigation of claims and objections in respect of attachment or sale of any property, whether or not mortgaged, pledged or hypothecated, and shall complete such investigation within 30 days of filing of the claims or objections;

(b) if the claims or objections are found by the Banking Court to be malafide or filed merely to delay the sale of the property, it shall impose a penalty upto twenty percent of the sale price of the property;

(c) the Banking Court may, in its discretion, proceed with the sale of the mortgaged, or pledged or hypothecated property if, in its opinion the interest of justice so require:

Provided that the financial institution gives a written undertaking that in the event the objections are found to be valid, or are sustained, it shall in addition to compensating the aggrieved party by the payment of such amount as may be adjudged by the Banking Court also pay a penalty upto twenty percent of the sale proceeds and such amount shall be recoverable from the financial institution in the same manner as in execution of decrees passed hereunder.

20. Provisions relating to certain offences.- (1) Whoever —

(a) dishonestly commits a breach of the terms of a letter of hypothecation, trust receipt or any other instrument or document executed by him whereby possession of the assets or properties offered as security for the re-payment of finance or fulfillment of any obligation are not with the financial institution but are retained by or entrusted to him for the purposes of dealing with the same in the ordinary course of business subject to the terms of the letter of hypothecation or trust receipt or other instrument or document or for the purpose of effecting their sale and depositing the sale proceeds with the financial institution; or

(b) makes fraudulent mis-representation or commits a breach of an obligation or representation made to a financial institution on the basis of which the financial institution has granted a finance; or

(c) subsequent to the creation of a mortgage in favour of a financial institution, dishonestly alienates or parts with the possession of the mortgaged property whether by creation of a lease or otherwise contrary to the terms thereof, without the written permission of the financial institution; or

(d) subsequent to the passing of a decree under section 10 or 11, sells, transfers or otherwise alienates or parts with possession of his assets or properties acquired after the grant of finance by the financial institution, including assets or properties acquired benami in the name of an ostensible owner shall, without prejudice to any other action which may be taken against him under this Ordinance or any other law for the time being in force, be punishable with imprisonment of either description for a term which may extend to three years and shall also be liable to a fine which may extend to the value of the property or security as agreed or the market value whichever is higher and shall be ordered by the Banking Court trying the offence to deliver up or refund to the financial institution, within a time to be fixed by the Banking Court, the property or the value of the property or security.

Explanation.- Dishonesty may be presumed where a customer has not deposited the sale proceeds of the property with the financial institution in violation of the terms of the agreement between the financial institution and the customer.

(2) Whoever knowingly makes a statement which is false in material respects in an application for finance and obtains a finance on the basis thereof, or applies the amount of the finance towards a purpose other than that for which the finance was obtained by him, or furnishes a false statement of stocks in violation of the terms of the agreement with the financial institution or falsely denies his signatures on any banking document before the Banking Court, shall be guilty of an offence punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(3) Whoever resists or obstructs, either by himself or on behalf of the judgment debtor, through the use of force, the execution of a decree, shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

(4) Whoever dishonestly issues a cheque towards re-payment of a finance or fulfillment of an obligation which is dishonoured on presentation, shall be punishable with imprisonment which may extend to one year, or with fine or with both, unless he can establish, for which the burden of proof shall rest on him that he had made arrangements with his bank to ensure that the cheque would be honoured and that the bank was at fault in not honouring the cheque.

(5) Where the person guilty of an offence under this Ordinance is a company or other body corporate, the chief executive by whatever name called, and any director or officer involved shall be deemed to be guilty of the offence and shall be liable to be prosecuted against and punished accordingly.

(6) All offences under this Ordinance shall be bailable, non-cognizable and compoundable.

21. Application of fines and costs.-

(1) A Banking Court may direct that the whole or part of any fine or costs imposed under this Ordinance shall be applied in or towards —

(a) payment of costs of all or any proceedings under this Ordinance; and

(b) payment of compensation to an aggrieved party.

(2) An order under sub-section (1) shall be deemed to be a decree passed under this Ordinance for purposes of execution.

22. Appeal.-

(1) Subject to sub-section (2), any person aggrieved by any judgment, decree, sentence, or final order passed by a Banking Court may, within thirty days of such judgment, decree, sentence or final order prefer an appeal to the High Court.

(2) The appellant shall give notice of the filing of the appeal in accordance with the provisions of Order XLIII Rule 3 of the Code of Civil Procedure (Act V of 1908) to the respondent who may appear before the Banking Court to contest admission of the appeal on the date fixed for hearing.

(3) The High Court shall at the stage of admission of the appeal, or at any time thereafter either suo motu or on the application of the decree holder, decide by means of a reasoned order whether the appeal is to be admitted in part or in whole depending on the facts and circumstances of the case, and as to the security to be furnished by the appellant:

Provided that the admission of the appeal shall not per se operate as a stay, and nor shall any stay be granted therein unless the decree-holder has been given an opportunity of being heard and unless the appellant deposits in cash with the High Court an amount equivalent to the decretal amount inclusive of costs, or in the case of an appeal other than an appeal against an interim decree, at the discretion of the High Court furnishes security equal in value to such amount; and in the event of a stay being granted for a part of the decretal amount only, the requirement for a deposit in cash or furnishing of security shall stand reduced accordingly.

(4) An appeal under sub-section (1) shall be heard by a bench of not less than two Judges of the High Court and, in case the appeal is admitted, it shall be decided within 90 days from the date of admission.

(5) An appeal may be preferred under this section from a decree passed ex-parte.

(6) No appeal, review or revision shall lie against an order accepting or rejecting an application for leave to defend, or any interlocutory order of the Banking Court which does not dispose of the entire case before the Banking Court other than an order passed under sub-section (11) of section 15 or sub-section (7) of section 19.

(7) Any order of stay of execution of a decree passed under sub-section (2) shall automatically lapse on the expiry of six months from the date of the order whereupon the amount deposited in court shall be paid over to the decree-holder or the decree-holder may enforce the security furnished by the judgment-debtor.

23. Restriction on transfer of assets * properties.-

(1) After publication of summons under sub-section (5) of section 9, no customer shall, without the prior written permission of the Banking Court transfer, alienate, encumber, remove or part with possession of any of his asset or property furnished to the financial institution as security by way of mortgage, pledge, hypothecation, charge, lien or otherwise pending final decision of the suit filed by the financial institution under this Ordinance and any such transfer, alienation, encumbrance or other disposition by the customer in violation of this sub-section shall be void and of no legal effect:

Provided that the customer may sell any such asset or property which has been retained by or entrusted to him for purposes of dealing with the same in the ordinary course of business subject to the terms of the letter of hypothecation or trust receipt or other instrument or document executed by him, or for purposes of effecting their sale and depositing the sale proceeds with the financial institution:

Provided further that the customer before making the sale shall file in the Banking Court a statement supported by affidavit, containing full particulars of such asset or property, and within three days after the sale shall submit a full account thereof to the Banking Court and the financial institution.

(2) After pronouncement of judgment and decree by the Banking Court, including in interim decree under section 11, no judgment-debtor shall without the prior written permission of the Banking Court transfer, alienate, encumber or part with possession of any assets or properties and any such transfer, alienation, encumbrance or other disposition by a judgment-debtor in violation of this sub-section shall be void and of no legal effect.

(3) The provisions of sub-section (1) shall also apply to a person who has furnished any security on behalf of a customer to the financial institution on the basis of which finance was granted, provided such person is a defendant in the suit filed under section 9 or is added as a defendant thereafter.

24. Application of the Limitation Act, 1908 (Act IX of 1908).-

(1) Save as otherwise provided in this Ordinance, the provisions of the Limitation Act, 1908 (Act IX of 1908) shall apply to all cases instituted or filed in a Banking Court after the coming into force of this Ordinance.

(2) A suit under section 9 may be entertained by a Banking Court after the period of limitation prescribed therefore, if the plaintiff satisfies the Banking Court that he had sufficient cause for not filing the suit within such period.

25. Power to make rules.-

The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

26. Removal of difficulties.-

If any difficulty arises in giving effect to any of the provisions of this Ordinance, the Federal Government may, by notification in the official Gazette, make such provisions as it thinks fit for removing such difficulties.

27. Finality of order.-

Subject to the provisions of section 22, no court or other authority shall revise or review or call, or permit to be called, into question any proceeding, judgment, decree, sentence or order of a Banking Court or the legality or propriety of anything done or intended to be done by the Banking Court in exercise of jurisdiction under this Ordinance:

Provided that the Banking Court may, on its own accord or on application of any party, and with notice to the other party or, as the case may be, to both the parties, correct any clerical or typographical mistake in any judgment, decree, sentence or order passed by it.

28. Indemnity.-

No suit, prosecution or other legal proceeding shall lie against the Federal Government or a Banking Court or a financial institution or any person for any thing which is in good faith done or intended to be done under this Ordinance or any rule made thereunder.

29. Repeal.-

(1) The Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 (Act XV of 1997) is hereby repealed.

(2) Notwithstanding the repeal of the (Recovery of Loans, Advances, Credits and Finances) Act, 1997 (Act XV of 1997) and the provisions of this Ordinance, decrees in cases relating to interest-bearing loans which have not been converted into finance shall be passed in accordance with the provisions of section 15 of the said Act.

General

ERVEZ MUSHARRAF,

President.

Mr. Justice

FAQIR MUHAMMAD KHOKHAR.

Secretary.

AMK-0901/msw/hd/GAZETTE(new)-ordinance