

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Justice Muhammad Ali Mazhar
Justice Musarrat Hilali
Justice Irfan Saadat Khan

Civil Petition No.1481-L of 2019

Against the judgment dated 07.02.2019 passed by
the Lahore High Court, Lahore in R.F.A.470/2000

M/s. Crescent Spinning Mills Ltd.

...Petitioner

Versus

Citibank N.A. 308 Upper Mall, Lahore and others

...Respondents

For the Petitioner:

Mr. Haq Nawaz Chattha, ASC

For Respondent-1:

Mr. Muhammad Omar Saleem, ASC

Date of Hearing:

01.06.2026

Judgment

Muhammad Ali Mazhar, J. This Civil Petition for leave to appeal is directed against the judgment dated 07.02.2019 passed by the Lahore High Court, Lahore, in Regular First Appeal No. 470/2000 **(R.F.A)** whereby the appeal was dismissed.

2. According to the narrative of the petitioner, they availed financial facilities from the respondent No. 1 **(Citibank)** during 1990-1995, however, they could not repay the dues in line with the agreed schedule. The respondent No.1 filed a suit for the recovery of a sum of Rs.76,241,234.68/- before the Banking Court/Lahore High Court on 13.11.1995. Application for leave to defend was dismissed and suit was decreed on 15.10.1999. The RFA was filed by the petitioner in the Lahore High Court against

the judgment and decree which was dismissed vide impugned judgment and decree dated 07.02.2019. The pivotal point at issue before the learned Appellate Court was that whether the Banking Court (learned Single Judge of the Lahore High Court) could grant the Civil Miscellaneous Application (**CMA**) No. 568-B/2000) filed by respondent No.1 under Section 152 of Civil Procedure Code 1908 (**CPC**) for praying amendment in decree dated 15.10.1999 for adding markup from the date of institution of the suit till actual realization of the decretal amount which application was allowed and decree was amended accordingly.

3. The learned counsel for the petitioner argued that the respondent No. 1 filed the above-mentioned suit before the erstwhile Banking Tribunal constituted under the provisions of the Banking Tribunals Ordinance, 1984 (**Ordinance of 1984**), wherein the decree could only be passed under Section 6 (4) in favour of the banking company as prayed for in the plaint and in the case at hand, the Bank only prayed for principal amount along with liquidated damages from 01.10.1995 at the rate of 19% per annum till full and final realization of the decretal amount. The Court decreed the suit but the claim for liquidated damages was disallowed. It was further averred that during pending adjudication, the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 (**1997 Act**) was promulgated and the Ordinance of 1984 was repealed. In the new 1997 Act, the Banking Court was empowered to grant mark up to a banking company under sub-section (1) of Section 15. It was further contended that the rights and obligations of the petitioner and the respondent No. 1 bank would be governed by the law which was in force at the time of filing the suit for recovery and the repeal of law would not affect the respective rights and obligations of the parties. He further argued that Section 152 CPC could not apply for making substantial changes/amendments in the decree.

4. The learned counsel for the respondent No.1 admitted that during the pendency of their suit, the 1997 Act was enacted and the suit was transferred to the Banking Court having jurisdiction under section 7 (6) of the 1997 Act. He further admitted that the suit was decreed for the outstanding amount but the claim for liquidated damages was declined. It was contended that since the Court omitted to award mark up in terms of section 15 of the 1997 Act, therefore for rectification of such omission, the respondent No.1 filed a CMA under Section 152 of the CPC for amendment and the decree was amended with the inclusion of mark up. It was further contended that though the Suit was instituted under the 1984 Ordinance but when the decree was passed, the 1997 Act was in field, therefore, the markup could be granted. In support of his contention, the learned counsel relied on the case of Shahida Bibi v. Habib Bank Limited [PLD 2016 SC 995]. So far as the niceties of Section 152 CPC are concerned, the learned counsel argued that the decree amending order was lawful and even under Order XLI, Rule 33 of CPC, an Appellate Court may pass any judgment or decree with the necessary amendments, therefore the learned Appellate Court rightly endorsed the amendment in the decree and dismissed all objections with proper application of mind.

5. Heard the arguments. In the first place, it is indispensable to dissect and analyze the different provisions of two enactments for resolving the actual controversy. The suit for recovery was filed under the provisions of Ordinance of 1984, (**Banking Tribunals Ordinance, 1984**), wherein Section 6 was quite relevant which is reproduced as under:-

6. Procedure of Banking Tribunal. (1) Where a customer commits default in fulfilling any obligation to a banking company, the banking company may file against such customer with the Banking Tribunal a plaint which shall be verified on oath by the Branch Manager or an officer of the rank of Assistant Vice-President or Assistant Manager or such other officer as the Board of Directors of the banking company may authorise in this behalf.

(2) On a plaint being filed with the Banking Tribunal in accordance with the provisions of sub-section (1), the Banking Tribunal shall issue notice requiring the defendant to show cause, within ten days of the service of such notice as to why decree as prayed for in the plaint should not be passed against him.

(3) The notice under sub-section (2) shall be served on the defendant in accordance with the procedure for service of notice laid down in sub-section (3) of section 4 of the Banking Companies (Recovery of Loans) Ordinance, 1979 (XIX of 1979).

(4) Upon the defendant failing to file a reply within the time given in the show-cause notice under sub-section (2) or upon rejection by the Banking Tribunal of the plea taken by him in the reply, **the Banking Tribunal shall pass a decree in favour of the banking company as prayed for in the plaint. [Emphasis supplied]**

(5) In the event of the Banking Tribunal passing a decree against the defendant failing to give a reply to the show-cause notice within the period specified in sub-section (2), the Tribunal may, on the application of the defendant filed within thirty days of the passing of the decree, set aside the same and permit the defendant to file his reply under that sub-section provided it is satisfied that there was sufficient cause for the defendant not having filed the reply within the specified period.

(6) All suits filed in the Banking Tribunal shall be disposed of within ninety days of the filing of the plaint and, in case the proceedings continue beyond the said period, the defendant shall be asked to furnish a bank guarantee acceptably to the Banking Tribunal to the extent of the claim in suit and, on failure of the defendant to furnish such bank guarantee within a period of fifteen days, the Banking Tribunal shall pass a decree in favour of the banking company as prayed for in the plaint:

Provided that, where the claim of the banking company is based on default of the defendant in payment of agreed instalment, the bank guarantee shall be to the extent of the amount of instalments in default:

Provided further that in case the proceedings continue beyond a further period of one hundred and twenty days, the defendant shall deposit with the Banking Tribunal in cash the amount claimed in the plaint and, on failure of the defendant to make such deposit within fifteen days, the Banking Tribunal shall pass a decree in favour of the banking company as prayed for in the plaint.

(7) Any amount deposited by the defendant with the Banking Tribunal under sub-section (6) may be withdrawn by the banking company upon an undertaking to refund the same to the Banking Tribunal if so ordered at any time.

(8) Where the claim filed before the Banking Tribunal is for the enforcement of a mortgage of immovable property, "decree" shall mean final decree for foreclosure, sale or redemption, as the case may be, as provided in Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908).

6. Whereas the 1997 Act (**Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997**) was enacted on 02.02.1997 and according to Section 28, the Banking Companies (Recovery of Loans) Ordinance, 1979 (XIX of 1979), the Banking Tribunals Ordinance, 1984 (LVIII of 1984), and the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Ordinance, 1997 (XXV of 1997), were repealed. It was further enumerated under sub-section (2) that notwithstanding anything contained in the General Clauses Act, 1897 or in any appointment order or contract, no person shall have any vested right in respect of his appointment or any term and condition of his appointment made under any of the Ordinances repealed. Contemporaneously, we cannot close the eyes to Section 7 of this enactment which was dealing with the Powers of Banking Courts wherein it was provided that (1) Subject to the provisions of this Act, 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; (b) in the exercise of its criminal jurisdiction, try offences punishable under this Act and shall, for this purpose have the same powers as are vested in a Court of Sessions under the Code of Criminal Procedure, 1898: Provided that a Banking Court shall not take cognizance of any offence punishable under this Act except upon a complaint in waiting made by a person authorized in this behalf by the banking company in respect of which the offence was committed. However, its sub-section 6 and 7 were related to the transfer and trial of cases commended in previous law which are quite relevant to this heated discussion. For the ease of reference sub-section 6 and 7 are reproduced as under:-

(6) All proceedings, including proceedings following the filing of an arbitration award and proceedings for the execution of a decree within the jurisdiction of a Banking Court, pending in any Special Court constituted under the Banking Companies (Recovery of Loans) Ordinance, 1979 (XIX of 1979), or under the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Ordinance, 1997 (XXV of 1997), or any Banking Tribunal under the Banking Tribunals Ordinance, 1984 (LVIII of 1984), or any other Court including a High Court shall stand transferred to, or be deemed to be transferred to the Banking Court having jurisdiction. On transfer of proceedings under this

sub-section, a Banking Court shall require the attendance of the parties through notices issued in accordance with the procedure for service of summons or notice laid down in sub-section (3) of Section 9.

(7) In respect of proceedings transferred to a Banking Court under sub-section (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 or Tribunal from which the proceedings were transferred. [Emphasis supplied]

7. All at once, Section 15 of the 1997 Act also carries great weight which accentuates the constituents of decree that might have been passed by the Banking Court which is reproduced as under:-

15. Decree. (1) The decree shall provide for interest or mark-up, as the case may be, on the judgment-debt from the date of institution of suit to payment:

(a) in the case of a loan, for interest at the contracted rate or at the rate of two per cent above the State Bank Repo rate whichever is higher; and

(b) in the case of finance under a system not based on interest, for mark-up at the contracted rate or at the latest rate of the banking company for similar finance whichever is higher.

Explanation: In clause (a) "State Bank Repo rate" means the Repo rate fixed by the State Bank of Pakistan.

(2) Notwithstanding anything contained in sub-section (1) if the Court is satisfied that it is not feasible to make a full recovery of a loan or finance by reason of the fact that the security or assets are inadequate and with a view to facilitating recovery and in the best interest of the banking company, it may, on condition that the customer pays the principal amount and such part of the interest or mark-up as has not been remitted- (a) remit or release part of the interest or mark-up; (b) allow repayment in installments.

Provided that- (i) prior to exercising the powers conferred herein the court shall obtain a detailed and reasoned opinion of the banking company in writing in relation to the above setting out the relevant facts and circumstances; (ii) in no event shall a write off of interest or mark-up for a period in excess of one year, or the grant of installments in excess of two years, be allowed without the written consent of the banking company, which consent shall set out in detail the relevant facts and circumstances; and (iii) a copy of the order shall be forwarded to the State Bank.

8. The averments of the plaint instituted by the respondent No.1 for the recovery with the liquidated damages through sale of

hypothecated assets and mortgaged property contained the following prayer clause:

“It is, therefore, respectfully prayed that judgment and decree may kindly be passed in favour of the Plaintiff and for a sum of the Defendants jointly severally, Rs.76,241,234.68 and the decretal amount may kindly be ordered to be realized by the sale of the mortgaged property described in para 7 above and by the sale of stocks hypothecated by the Defendant Company in favour of the Plaintiff.

It is prayed that in case the sale proceeds of the said properties and hypothecated stocks are found insufficient for the and satisfaction realization liberty may kindly be reserved of for entire decretal amount, then the Plaintiff under Order XXXIV Rule 6 CPC is to obtain money decree for the balance amount.

It is further prayed that the plaintiff may kindly be from 01.10.1995 pendente lite and 10% per annum till full and final allowed the liquidated damages post decretal at the rate of realization of the decretal amount.

Cost of the suit may kindly be allowed to the Plaintiff.

Any other relief that this Honourable Tribunal deems appropriate, may kindly be allowed to the Plaintiff”.

9. The petitioner had filed the appeal under Section 21 of the 1997 Act (as it then was) for challenging the judgment and decree dated 15.10.1999 passed in Suit No.128 of 1997. According to the nucleus of the impugned judgment, the Appellate Court held that the learned Single Judge of High Court (acting as Banking Court) had omitted to award markup as envisioned under Section 15 of the Act of 1997, therefore, the decree was rightly amended with the aid of Section 152 CPC. Furthermore, it was held that under Order XLI, Rule 33 CPC, the Appellate Court has power to pass any decree and make any order which ought to have been passed or made and to pass or make such decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. Finally, it was held that even if the amendment of decree had not been allowed by the learned Single Judge, this Court (Appellate Court) could have amended the

decree so as to include the amount of markup under Section 15 of the 1997 Act.

10. Here and now, we must take into account the doctrines of “intra petita” or “infra petita” and “ultra petita” which are somewhat imperative for bearing in mind elementary and deep-seated canons of judicial procedure in civil and administrative law. The Latin maxim “infra petita” (less than what was requested) commands that a judge must deal with all the claims raised by the parties and the such judgment is considered “infra petita” if the court refuses to make a decision partly on one or several claims but virtually move off the dispute leaving it unresolved. Whereas the principle of ultra petita (beyond the request), proscribes the Court from determining the issues that were not submitted to its jurisdiction by the parties or from bequeathing farther than what was exactly entreated. This doctrine strengthens the clear-sightedness that the court's jurisdiction is circumscribed to render the judgment or decision for the matters actually brought before it by the parties for resolution. The expression “ultra petita” exemplifies the situation where the Court/Judge has granted more than the relief entreated or beyond the pleading or granted altogether distinct from what was actually solicited. By the same token, the doctrine of “extra petita” signposts another legal creed which is vis-à-vis the jurisdiction of the Court/authority and draws attention to the set of circumstances where a Court/Tribunal/Authority surpasses and transcends its jurisdiction while rendering order/judgment and decree. The general rule in civil law is that a court cannot grant a relief that has not been explicitly claimed in the plaint. Order VII, Rule 7 CPC also commands that a plaint should explicitly state the relief claimed which indeed wards off the defendant from being taken by surprise as he can only defend what has been formally alleged in the lawsuit. If a relief is not claimed, the Court deduces that it has been abandoned by the plaintiff under Order II, Rule 2 of CPC. Mere jotting down a boilerplate prayer that “Any other relief which

this Honorable Court deems fit and proper may also be granted" is not sufficient for justifying un-claimed relief unless it is from top to bottom harmonious with the facts and evidence already on the record.

11. So far as the reliance of the learned Appellate Court on Order XLI, Rule 33 of CPC in the impugned judgment is concerned, we have no doubts in our mind that the Appellate Court in order to do complete justice between the parties may modify, adjust, or completely rewrite the order, judgment and decree and may pass any order or judgment which the trial court ought to have passed but it cannot invent altogether a new case or a cause of action that was never pleaded in the Trial Court. The Appellate Court in the aid of above provision cannot grant any such relief that was never claimed. The principle of "moulding the relief" is structured on facts and evidence already on the record and not to create a brand-new case. In this case the prayer of the respondent No.1 clearly reflects that it was without any claim of markup which means they omitted such relief in their plaint. The Appellate Court can only grant alternate or modified relief if essential facts in the pleadings are already present and complementary to the overall case nature without contradicting statutory law.

12. This Court in the case of Samar Gul v. Muhammad Firdos (**PLD 1986 SC 35**), held that if the facts giving rise to a relief are fully stated in the plaint and established through evidence, the court is fully competent to grant that relief, even if it was not specifically asked for in the prayer clause. In the case of Trojan & Co. v. RM.N.N. Nagappa Chettiar (**AIR 1953 SC 235**), the Court held that the decision of a case cannot be based on grounds outside the pleadings. If a plaintiff does not state the necessary facts and explicitly request a relief, the court has no jurisdiction to hand it out. While in the case of Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi (**AIR 2010 SC 475**), the Court explicitly stated that the Court should not grant a relief that is not even prayed for

by the petitioner. The Court emphasized that a defendant must know exactly what claim they are fighting; surprising them with an unrequested decree violates the principles of natural justice. In the case of Akella Lalita v. Sri Konda Hanumantha Rao (**2022 INSC 759**), the Court reiterated that granting a relief without a foundational prayer or pleading deprives the opposing party of a fair opportunity to resist it, resulting in a severe miscarriage of justice. Insofar as the powers of Court for moulding the relief are concerned, the Court in the case of Hindalco Industries Ltd. v. Union of India (**(1994) 2 SCC 594**) set certain parameters that under Order VII, Rule 7 CPC, courts do possess the inherent flexibility to "mould the relief" to match the realities of a situation but an un-prayed relief can only be granted if three strict conditions are met such as the un-prayed relief must be completely consistent with the case already set up in the plaint; the basic facts supporting that relief must already be present in the pleadings and there must be absolutely no element of surprise or unfair disadvantage caused to the defendant.

13. Now let us attend to the connotation and aftereffects of Section 6 of the General Clauses Act, 1897, which is exceptionally quintessential, which is extracted below:

6. Effect of repeal

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed as if the repealing Act or Regulation had not been passed.

14. In fact, this Section provides a legal safety device and shield, warranting that the repeal or amendment of a statute does not automatically obliterate accrued rights, liabilities, or enduring legal proceedings. When a law is repealed or amended while a legal proceeding is pending, its aftermath rests wholly on whether the alteration or modification in law upsets the substantive rights or if it only confines to the procedural changes. Under Section 6 of the General Clauses Act, 1897, the baseline rule is that pending proceedings should be adjudicated according to the old law that was in force unless the new law unambiguously avers otherwise.

15. In the case of Muslim Commercial Bank Limited v. Punjab Labour Appellate Tribunal **(2025 SCMR 303)**, one of us while speaking for the bench, held the law can be categorized as either substantive or procedural. Substantive law defines rights, while procedural law deals primarily with the process or remedies involved. Procedure is merely a machinery, a means to an end, and its object is to facilitate, not obstruct, the administration of justice. In fact, procedural laws are meant to set the rules for the judicial system, outlining how the business of the court should function to protect the rights of individuals within the credible and sound justice system. It is a well-settled exposition of law that procedural law initiates and guides the process and course of action through which the lawsuit progresses and the way in which court proceedings are undertaken. Substantive law, on the other hand, comprises statutory obligations relevant to the subject matter, declaring the applicable rights and obligations, and regulating the demeanor of an individual or government. Individuals do not possess a vested right in any particular course of procedure, so for all intents and purposes, the change in the law of procedure

operates retrospectively. However, laws affecting, curtailing or prejudicing vested rights shall be applied prospectively. It is a well-settled principle of interpretation of statute that where a statute affects a substantive right, it operates prospectively unless by express enactment or necessary indictment retrospective operation has been given. However, a statute, which is procedural in nature, operates retrospectively unless it affects an existing right on the date of promulgation or causes injustice or prejudice to the substantive right. The law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature. Every litigant has a vested right in substantive law but no such right exists in procedural law. In the case of Commissioner Inland Revenue v. Mekotex Pvt. Ltd. (**PLD 2024 SC 1168**), it was held that both "repeals" and "amendments" are viewed identically under Section 6. An amendment inherently involves the repeal of an old text and the creation of a new rule. The Court affirmed that Section 6 applies equally to both, meaning that an amendment cannot defeat a vested right that became absolute, complete, and unconditional prior to the modification, unless the legislature explicitly states a retroactive intent. While in the case of Commissioner of Income Tax Peshawar v. Islamic Investment Bank Ltd. (**2016 SCMR 816**), the Court established that once a tax liability accrues under an old law, it becomes a vested right of the State, protected by Section 6 even if the statute is repealed. Consequently, the government retains the authority to audit and collect on past liabilities. Whereas in the case of Laleesa Begum v. Iqbal Ahmed Qureshi (**PLD 1982 SC 396**), it was held that when a law is repealed, it is treated as if it never existed for future context. However, the court explicitly noted that the explicit exception to this rule is provided by Section 6. It held that the savings clause strictly preserves all pending legal proceedings, rights accrued, and obligations incurred under the old enactment, ensuring they survive the repeal intact. In the case of Muhammad Tariq Badr v. National Bank of Pakistan (**2013 SCMR 314**), it was

held that if a specific legal rule or section is deleted entirely, a litigant can still seek protection under Section 6 (c) of the General Clauses Act to shield any rights or privileges that had already accrued to them prior to the deletion. In the case of Commissioner Inland Revenue v. Eastern Federal Union Insurance (**PLD 1982 SC 247**), it was held that that once a financial liability or tax assessment window is triggered under an active law, it transforms into a vested right in favor of the State. Under Section 6, even if that original tax law is entirely repealed, authorities retain the lawful jurisdiction to review, amend, or pursue those assessments exactly as if the repealing Act had never been passed.

16. According to the dictums laid down by the Supreme Court of India in the case of State of Punjab v. Mohar Singh Pratap Singh (**1955 1 SCR 893**), it was held that courts cannot simply look at whether a law has been repealed or replaced. Instead, they must analyze the entire structure of the new Act to see if it manifests a contrary intention to destroy past rights, liabilities, or pending proceedings. If no such contrary intention exists, Section 6 automatically protects all accrued rights and pending actions under the old law. While in the case of Kolhapur Canesugar Works Ltd. v. Union of India (**AIR 2000 SC 811**), the Constitution Bench ruled that Section 6 of the General Clauses Act applies strictly to the repeal of an enactment or statute. It does *not* apply to the mere omission of a particular administrative rule or regulation unless specified. If a rule is completely omitted without a saving clause, pending proceedings under that rule fall apart immediately. In the case of Ramesh Singh v. Cinta Devi (**(1996) 3 SCC 142**), it was held that even if a new law is passed repealing the old framework while the case is pending, the litigant's right to appeal under the old law is fully preserved by Section 6. In the case of Commissioner of Income Tax v. Shah Sadiq & Sons (**(1987) 3 SCC 516**), the Court clarified that a right or liability becomes accrued or incurred under Section 6 when the factual criteria under the old law are met. A subsequent repeal cannot take away a taxpayer's accrued right to

claim a financial set-off or exemption earned under the repealed law, nor can it eliminate an existing tax liability.

17. Last but not least, while moving forward, we intend to examine the exactitudes of Section 152 CPC whose primary objective is to set right unintentional and inadvertent typographical, mathematical, or clerical errors which ensue by slip of the pen or a typing oversight or omission. For the ease of reference, it is reproduced as under:-

“Section 152 C.P.C. Amendment of judgments, decrees or orders: Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties”.

18. The comparative study of both the law decipher that in earlier law, the decree could be passed as prayed and it is an admitted fact that there was no prayer or exact provision under the law to grant markup or interest while in subsequent law, though specific section was enacted authorizing the banking court to grant markup. Sanguine to the niceties of Section 6 of the General Clauses Act 1897, the case was to be proceeded and decided within the parameters and ambit of law prevailing at the time of institution of the suit before a competent forum and relief prayed and available under the law could only be granted in terms of law applicable at the time of institution of suit and cannot travel beyond the prevailing provisions of law. It was not such a simple legal position wherein the decree could be amended by just applying Section 152 CPC. Looking closely at the specific mechanics of the aforesaid provision, it cannot be applied to reconsider or retrace the merits of the case whereby the substance of the judgment is altered, or adding new reliefs that were not formerly part of the proceedings. The intense theme of this provision is to ensure that no party suffers due to an error made by the court or its staff which is rooted in the legal maxim “*Actus Curiae Neminem Gravabit*” (an act of the court shall prejudice no

man) but it is aimed to straighten out the accidental typographical error, wrong numbers, or naming mistakes so that final decree tallies the judge's true intention. To sort out technical errors in property descriptions, interest rates, or claim amounts that would otherwise make a decree non-executable but the Court cannot supplement or alter the substance by adding a new relief for the reason that this provision stringently forbids a court from reexamining its decision or introducing an unequivocally new legal outcome. The overarching principle is that technical or clerical errors should never stand in the way of substantial justice but at the same time, Section 152 CPC cannot be expended to rehear a case or modify the fundamental rights of the parties. If a party on the face of it deems some errors arising out of intentional judicial decisions or oversights, the proper legal remedy is to file a Review Petition or an Appeal rather than seeking solutions by means of an application under Section 152 CPC.

19. There may be some instances *inter alia* wherein this provision can be applied such as in the main text of the judgment, the judgment unmistakably declares that the plaintiff is entitled to the costs of this suit but in the final decree, the court staff leaves the cost section blank; a plaintiff asks for the return of a stolen vehicle with damages for its misuse and the Court explicitly granted both in the oral announcement but omitted the amount of damages in the final judgment and decree; or the Court decides a boundary dispute and rules that the plaintiff owns "Plots A and B" but in the final decree, only "Plot A" was mentioned / typed and "Plot B" was omitted by mistake or typographic error and in the banking lawsuits, the Court in the judgment extensively dealt with the issue of markup and fixed the quantum to be paid by defendants, however, in the decree, by typographic error, only mentioned the principal amount and omitted to mention the markup.

20. In the case of Muhammad Shafi v. Muhammad Boota (**2004 SCMR 1611**), this Court held that where the overall text and tenor

of a judgment demonstrate the court's clear intent to pass a decree for an entire subject-matter (e.g., an entire piece of land), but a clerical slip limits it in the final order, the error can be corrected. The Court stated that "technical objections should not come in the way of dispensation of complete and substantial justice" and that an act of the court must not prejudice any person. In the case of Muhammad Tufail v. Ghulam Farid **(2000 SCMR 1035)**, this Court endorsed the rectification of property particulars when the error is purely typographical and confirmed that if the identity, extent, and character of the suit property are completely undisputed throughout the trial, but a minor clerical misdescription creeps into the final decree, Section 152 CPC is the appropriate tool to correct it without affecting the merits of the case.

21. The jurisprudence laid out by the Indian Supreme Court is not different. In the case of Jayalakshmi Coelho v. Oswald Joseph Coelho **(2001) 4 SCC 181/AIR 2001 SC 1084)**, it was held that the mistake must be one that is apparent from the record, meaning the Court fully intended to write or do something but failed to do so solely due to an accidental slip or oversight. The Court explicitly warned that a judge cannot reconsider historical facts, re-weigh evidence, or change their mind under Section 152 CPC. In the case of State of Punjab v. Darshan Singh **((2004) 1 SCC 328)**, the Court clarified the distinction between a court's "ministerial actions" and its "judicial actions". It ruled that Section 152 CPC only allows for the rectification of ministerial oversights (like mathematical mistakes or typing errors). The Court noted that after a judgment, decree, or order is officially announced, the judge becomes *functus officio* (their authority over the matter ends) and they cannot pass effective new judicial orders or modify the core rights of the parties using this provision. While in the case of Master Construction Co. (P) Ltd. v. State of Orissa **(AIR 1966 SC 1047)**, the Court ruled that an arithmetical mistake is purely a mistake of calculation, while a clerical mistake is an error made during typing, copying,

or writing. The court made it clear that if an error is the result of an intentional adoption of an incorrect legal principle or calculation method, it is a judicial error, and Section 152 CPC cannot be invoked to fix it.

22. Coincidentally, both learned counsel relied on the judgment of this Court rendered in the case of Shahida Bibi and others Vs Habib Bank Limited and others (**PLD 2016 SC 995**), which is directly focused on repeal of old law by new one under consideration by dint of this judgment. The salient features of the ruling are that a decree for the recovery of a certain amount was passed in this case under Section 6 of the 1984 Ordinance and an execution petition was filed under Section 11 of the said Ordinance. During the pendency of the execution proceedings, the 1997 law was promulgated and the Banking Tribunals constituted under the 1984 Ordinance were abolished after which the execution petition stood transferred to the Banking Court constituted under the 1997 Act. This Court held that there was only a transfer provision in the form of section 7 (6) of the 1997 Act, providing that all proceedings, including proceedings for the execution of a decree within the jurisdiction of a Banking Court, pending in any Banking Tribunal constituted under the 1984 Ordinance shall stand transferred to the Banking Court having jurisdiction under the 1997 Act. Moreover, it was held that in any event, it is indeed settled law, in line with Section 6 of the General Clauses Act, 1897, that any act done or any action taken or purported to have been done or taken under or in pursuance of the repealed Act, shall in so far as it is not inconsistent with the provisions of new Act, be deemed to have been done or taken under the corresponding provisions of the new Act and there is nothing in the repealing section, i.e. section 28 of the 1997 Act, to indicate that the Legislature meant for such Act to be applied with retrospective effect, therefore the question of retrospective application of the provisions of the 1997 Act does not arise, as the execution proceedings in the case at hand, though instituted

under the 1984 Ordinance, stood transferred to the Banking Court established under the 1997 Ordinance and then the 1997 Act, and in the absence of any saving clause as mentioned above, the relevant provisions of the 1997 Act were to apply on the date of transfer of such proceedings and thereafter.

23. In the wake of the above discussion, this Civil Petition is converted into an appeal and allowed. As a consequence thereof, the impugned judgment dated 07.02.2019, rendered by the learned Lahore High Court in R.F.A.470/2000, and the Order dated 23.02.2001, passed by learned single Judge of the High Court (Banking Court) in C.M.A No.568-B/2000, are both set aside to the extent of allowing markup by means of amended decree.

Judge

Judge

Judge

ISLAMABAD

01.06.2026

Khalid

Approved for reporting