

**JAVED AMIR & OTHERS. V/S. UNITED FOAM INDUSTRIES.****COMPANY MATTERS: (2016 CLD 393) .....SUPREME COURT OF PAKISTAN.**

Section 9(3) of the Companies Ordinance, 1984 did not abridge or curtail the power of the (Company) Court to enter into a factual inquiry, frame issues for determination, and record oral evidence as well as documentary evidence in the proceedings before it to determine the issues relating to a "company" or its members covered under the Companies Ordinance, 1984. Company Court having jurisdiction under the Companies Ordinance, 1984, could receive evidence in cases it thought appropriate in circumstances of the case. All matters relating to companies irrespective of the fact whether factual controversy was involved or not were required to be tried by a court having jurisdiction under the Companies Ordinance, 1984. Civil Court would not be the appropriate forum for resolving such matters.

**CH. NAZIR AHMED. V/S. ALI AHMED & OTHER.****BAR OF UNREGISTERED PARTNERSHIP: (2016 CLD 388) .....SUPREME COURT OF PAKISTAN.**

Suit for declaration (simpliciter) filed by partner of an existing unregistered partnership firm against the other partner. Such suit would be barred in terms of bar contained under S. 69 of Partnership Act, 1932, and plaint should be rejected on such account under O. VII, R. 11, C.P.C. Registration of a firm was a condition precedent and sine qua non to the right to institute a suit by or on behalf of the firm or its partner(s) as the case may be and any suit instituted against the mandate of law shall be barred, with the obvious consequences of rejection of the plaint by the Court as per Order VII, Rule II, C.P.C. which provided that "where the suit appears from the statement in the plaint to be barred by any law". Section 69 of Partnership Act, 1932, was mandatory and penal in nature, thus, the bar to the suit(s) falling within the ambit of said section was absolute and unequivocal.

**STATE LIFE INSURANCE CORP. V/S. ADDITIONAL DISTRICT JUDGE-1, LAHORE.****INSURANCE CLAIM: (2016 CLD 410) .....LAHORE HIGH COURT.**

Respondent-Insurance company filed application under S 162 of Insurance Ordinance, 2000 read with O. VII, R. 11, C.P.C. for rejection of insurance application on ground that applicant had not obtained prior sanction of Securities and Exchange Commission before filing of insurance application as required under S. 162 of Insurance Ordinance, 2000, which was dismissed by Insurance Tribunal. Insurance Tribunal and its jurisdiction for entertaining insurance claim, as per scheme of Insurance Ordinance, 2000, was dealt with in Part XV of the Ordinance, starting from Ss. 121 to 124. Concept of prior sanction was basically linked with criminal prosecution. Court was under duty to interpret various provisions of statute harmoniously in order to advance remedy. Any other interpretation of provision of S. 162 of Insurance Ordinance, 2000 would lead to suppression of remedy that did not seem to be in conformity with provisions of Arts. 2-A, 3, 4, 5, 9, 18 & 23 of the Constitution, and the same would give undue advantage and edge to the insurance company over bona fide claimant. Constitutional petition was dismissed in circumstance.

**MERCK SHARP & DHOME CORP. V/S. FEROZESONS LAB. LTD.****APPEAL IN PATENTS: (2016 CLD 01) .....LAHORE HIGH COURT.**

Plaint of suit filed under S.60 of Patents Ordinance, 2000, was rejected. Contention of plaintiff was that since no other remedy was available against order passed by Trial Court in suit, so remedy of appeal under general law was available. Under S. 96, C.P.C., appeal was available against decree passed by courts subordinate to such appellate court performing its function under C.P.C. Under Patents Ordinance, 2000, no procedure had been made applicable including the C.P.C. to regulate proceedings of trial. Remedy of appeal was provided in Chapter XVIII of Patents Ordinance, 2000, but same was restricted to appeals from decision, order or direction of Controller or Federal Government made under any provision of the Patents Ordinance, 2000. No appeal was provided under said Chapter from any order passed by District Judge in its capacity of Trial Court before any forum. Person aggrieved of order passed by District Judge in suit under S. 60 of Patents Ordinance, 2000 was not competent to avail remedy of appeal under S. 96, C.P.C. Appeal was dismissed in circumstances.

Unlike Trade Marks Ordinance, 2001, no provision was made in Patents Ordinance, 2000, whereby provision of any law including C.P.C. had been made applicable for purpose of regulating proceedings of suit or appeal under Patents Ordinance, 2000.

**MUHAMMAD ISMAIL. V/S. DUBAI ISLAMIC BANK PAKISTAN LTD.****AUCTION PROCEEDING: (2016 CLD 05) .....SINDH HIGH COURT.**

Appellant impugned the order of Banking Court of the Financial Institutions (Recovery of Finances) Ordinance 2001 was held to be ultra vires of the Constitution and struck down by the Supreme Court, the entire auction process carried out by the Financial institution was a nullity in the eye of the law. Present matter was not a past and closed transactions neither the possession been delivered to the auction-purchaser Bank nor any sale deed had "been executed, and only proceeding of auction had taken place where in fact the Bank itself purchased the mortgaged property. High Court held that the criteria for determining past and closed transacts as held in 2014 SCMR 283 was fully attracted to the present case and auction proceedings could not be sustained and were liable to be set aside. Appeal was allowed, accordingly.

**BANK OF PUNJAB. V/S. MAGIC RIVER COMPANY & OTHERS.****ATTORNEY OF BANK: (2016 CLD 176) .....LAHORE HIGH COURT.**

Officer of financial institution who holds power-of-attorney need not to append anything else other than the power-of-attorney to demonstrate his authority to institute suit under S. 9 of Financial Institutions (Recovery of Finances) Ordinance, 2001.