

Comment on the Lahore High Court Judgment in *Al-Baraka Bank (Pakistan) Limited v Province of Punjab through Secretary Food*

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Introduction

This case note examines the judgment of the Lahore High Court ('LHC') on consolidated petitions raising a common question of law and facts, that is, "whether the cane growers are entitled to recover amounts due to them through [the] sale of bags of sugar by the Cane Commissioner on account of their statutory right, or whether the banks have a priority for the settlement of their debt over the bags of sugar because of the pledge in their favour."¹ The Court interpreted the Punjab Sugar Factories Control Act 1950 ('Act') and the Punjab Sugar Factories Control Rules 1950 ('Rules') using a purposive and progressive interpretation of the law to conclude that the legal right of the cane growers, being the owners of the sugarcane, was superior to the right of any other secured or non-secured creditors.

This case note analyses the LHC judgment in view of the established principles of statutory interpretation and jurisprudence from various jurisdictions. It shows that the reasons given by the Court are concrete and sound and meet the intent and purpose of the law. It concludes that the arguments of the banks were flawed, as they were against the intent of the law and jurisprudence on the subject. The Court has thus rightly deciphered the intent of the law in the context of the legal relationship of the cane growers, the sugar mills, and the banks.

Facts and Judgment

There were two sets of petitioners before the Court with competing claims: the cane growers and the banks. The Cane Commissioner, Punjab, and three sugar mills, namely Brother Sugar Mills, Darya Khan Sugar Mills, and Pattoki Sugar Mills ('Sugar Mills'), were the common respondents.

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¹ *Al-Baraka Bank (Pakistan) Ltd. v Province of Punjab through Secretary Food and others* PLD 2018 Lah 450.

The claim of the cane growers was that they supplied sugarcane to the Sugar Mills and fulfilled their legal obligation; however, the Sugar Mills failed to make the corresponding payments, which is a violation of the Act, the Rules and their fundamental right to do business under the 1973 Constitution. The cane growers stated that if the amount collected from the sale of bags of sugar is given to the banks, then they will have no chance to recover any amount from the Sugar Mills.²

On the other hand, the banks claimed that the Sugar Mills have pledged bags of sugar to them in order to avail finance facilities, and that the pledge remains intact and protected under the law. It is the claim of the banks that the Cane Commissioner took possession of the bags of sugar lying in the godowns of the Sugar Mills illegally and unlawfully. The banks stated that they have constructive possession and, being secured creditors, they have a superior right over the pledged stock. Thus, their preferential rights cannot be defeated by any claimant especially unsecured creditors such as the cane growers.³

The Province of Punjab claimed that the Cane Commissioner has powers under the Act and Rules to take necessary action to settle the debt of the cane growers in the event of any default by the Sugar Mills. The Sugar Mills stated that the amount recovered from the sale of the sugar bags should be handed over to the banks to settle their debt, and that the cane growers have no right on the pledged stock of the banks.⁴

The Court held that the cane growers, being *owners*, have prior right to recover the value of the sugarcane delivered to the Sugar Mills by the sale of the bags of sugar, and that the Cane Commissioner is the competent authority to recover what is due to the cane growers. The Court further held that the banks have adequate remedy for the recovery of their debt by filing recovery suits before the competent courts, and their right is not prejudiced if the sale proceeds from the pledged stock is given to the cane growers.⁵ This judgment has been appealed against in the Supreme Court of Pakistan.

² Ibid, 453.

³ Ibid, 454.

⁴ (n 1) 455.

⁵ (n 1) 487.

Analysis

Rights and Arguments of the Banks

Section 172 of the Contract Act 1872 ('Contract Act') defines a 'pledge' as a bailment of goods as security for payment of a debt.⁶ Section 148 of the Contract Act prescribes that bailment is the delivery of goods by one person to another person, which are either returned or otherwise disposed of as per the direction of the person delivering the goods.⁷ Furthermore, Section 173 provides that the pawnee can retain the pledged goods till the payment of debt.⁸

In view of these provisions, the counsel for the banks argued that the Cane Commissioner cannot sell the pledged bags of sugar to settle any debt of the cane growers as the pledged stock is protected under the law. The counsel further argued that the banks being secured creditors have a preferential right, and that the debt of the cane growers (being unsecured debt) cannot be given priority over the rights of the banks. To support this stance, the counsel emphasized the judgment in *The Bank of Bihar v The State of Bihar and others*.⁹ The counsel argued that, at best, the debt of the cane growers is a government due, which does not get preferential rights over secured creditors (*M/s Industrial Development Bank of Pakistan v M/s Maida Limited and others*,¹⁰ *United Bank Limited v P.I.C.I.C and others*¹¹ and *Collector of Customs, Karachi v Naya Daur Motors (Pvt.) Ltd. and others*).¹² Thus, the banks enjoy priority in the recovery of the

⁶ "The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'. The bailor is in this case called the 'pawnor'. The bailee is called the 'pawnee'."

⁷ "A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the 'bailee'."

⁸ "The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged."

⁹ AIR 1971 SC 1210.

¹⁰ 1994 SCMR 2248.

¹¹ 1992 SCMR 1731.

¹² 2015 SCMR 1376.

due amount from the sale of the bags of sugar (*Orix Leasing Pakistan Limited v Sunshine Cloth Limited*¹³ and *Polyolefins Industries Ltd. v Kosmek Plastics Manufacturing Co. Ltd.*)¹⁴

The banks sought an enforcement of their rights as a pawnee, and claimed priority as secured creditors in terms of the Contract Act and the law laid down in judgments of the superior courts of both Pakistan and India.¹⁵

Rights and Arguments of the Cane Growers

The counsel for the cane growers argued that, under Sections 13 and 16 of the Act, and Rule 14(2) of the Rules, the right of the cane growers is a statutory right, and this right has also been acknowledged by the Sugar Mills whilst issuing the Cane Purchase Receipts ('CPRs'). Hence, the Sugar Mills are bound under the statute to pay the cane growers the value/price of the sugarcane within *fifteen days* of the delivery of the cane. The counsel further submitted that a special law regulates the sugar industry and that, in fact, the Act purposely regulates the supply of sugarcane and its payment within a specified time.¹⁶ Thus, the cane growers being the owners of the sugarcane supplied to the Sugar Mills seek enforcement of their *statutory* right.

Arguments of the Additional Advocate General, Punjab

The Additional Advocate General ('AAG') argued that the legislature has balanced the relationship between the cane grower and the Sugar Mills, stressing that the Act and the Rules provide a comprehensive procedure and mechanism to protect the cane growers as the Provincial Government fixes the minimum price for the sugarcane, and ensures that the Sugar Mills pay the price to the cane growers *within a specified time* without any deductions. Therefore, the AAG submitted that Section 6 of the Act authorizes the Cane Commissioner to recover amounts due to the cane growers.

¹³ 2001 PTD 3146.

¹⁴ 2002 PTD 1638.

¹⁵ (n 1) 456.

¹⁶ (n 1) 459-60.

The AAG referred to the preamble of the Act and argued that the Act regulates both the supply and the price of sugarcane. The AAG submitted that Section 9 of the Act obliges the Sugar Mills to provide an estimate of the required quantity of the sugarcane. Section 13 requires the sugar mill to purchase quantified amount of sugarcane from the cane grower in the reserved area. Section 16 authorizes the Government of Punjab to fix the price of the sugarcane and provides that no deduction shall be made from the price of sugarcane due to a cane grower. Moreover, Section 16-A prescribes a penalty for non-compliance with Section 16, that is, imprisonment up to two years with a fine which may extend to twice the price of the sugarcane or twice the amount of quality premium due.¹⁷ The AAG also cited Rules 11 and 12 which provide for the purchase of the sugarcane through a purchase centre and a licensed purchase agent. Rule 13 provides that the cane grower must receive the minimum price of the sugarcane. Rule 14 states that the sugar mill must provide adequate facilities to the satisfaction of the Cane Commissioner for the payment of the price of sugarcane within fifteen days of the delivery of sugarcane. Rule 14(6) provides that no deduction shall be made by way of fine or otherwise from the price of the sugarcane except for a loan given to help a grower with the cultivation. In case the payment is not made within fifteen days, the purchasing agent shall be liable to pay an interest at the rate of 11% per annum.¹⁸ In a nutshell, the AAG sought protection of the statutory right of the cane growers which is to receive payments for the sugarcane purchased by the Sugar Mills.¹⁹

Opinion of the Court

In her judgment, Justice Ayesha A. Malik stated, “so far as the rights of the Banks as secured creditors are concerned, there is no denying the legal position that secured creditors get priority over government dues and non-secured creditors”.²⁰ However, the Court distinguished the right of the

¹⁷ (n 1) 458.

¹⁸ (n 1) 459.

¹⁹ (n 1) 454-55.

²⁰ (n 1) 471-72; *Federation of Pakistan v Pioneer Bank Ltd. and others* PLD 1958 Dacca 535; *Collector of Customs, Karachi v Naya Daur Motors (Pvt.) Ltd. and others* 2015 SCMR 1376; *United Bank Limited v P.I.C.I.C and others* 1992 SCMR 1731; *Orix Leasing Pakistan Limited v Sunshine Cloth Limited* 2001 PTD 3146; *M/s Industrial Development Bank of Pakistan v M/s Maida Limited and others* 1994 SCMR 2248.

cane growers from government dues, examining cases from the Indian Court, and held that “whilst banks have a right to possession over the bags of sugar pledged, the cane grower has a statutory right to recover the price of sugarcane delivered”.²¹

After a thorough analysis of the Act and the Rules as well as the arguments submitted by the counsels, the Court held that “the Act and the Rules envision a framework which protects the cane growers’ ownership rights as well as ensures that the right [to recover the value of the sugarcane] is enforceable.”²² Thereafter, the Court examined the provisions of the Sale of Goods Act 1930 (‘Sale of Goods Act’), the principles of statutory interpretation, and the jurisprudence of several jurisdictions such as England, the USA, Germany, Australia, and Hong Kong to ascertain the ‘intent of the law’ and the ‘intent of the parties’ with reference to the transfer of title when goods are delivered to the buyer.

Section 19 of the Sale of Goods Act provides that property in specific goods is transferred to the buyer at the time when the parties to the contract *intend* it to be transferred. The intention of the parties is ascertained from the terms of the contract, the conduct of the parties, and the circumstances of the case. Section 20 provides that, where there is an unconditional contract for the sale of specified goods, the property in the goods passes when the contract is made. Section 21 provides that, when the seller is bound to do something in order to put the specified goods in a deliverable state, the property in the goods passes after the seller has done the required act. Section 22 stipulates that, where the seller is bound to weigh, measure, or test the specified goods, the property in the goods will not transfer until the seller has done what he is required to do. According to Section 23, the property in unascertained or future goods will pass when the goods are appropriated by the seller or the buyer. Finally, Section 24 provides that, where goods are delivered to the buyer on approval or on return, the property in the goods will pass when the goods are approved or accepted by the seller. The Court held that these sections clarify that the

²¹ (n 1) 472-473; *State of Bihar v Bank of Bihar Ltd.* AIR 1963 Patna 344 (Overruled in AIR 1971 SC 1210); *State of M.P. v Jaora Sugar Mills Ltd. and others* (1997) 9 Supreme Court Cases 207; *Agauta Sugar and Chemicals v State of U.P. and others* (1997) 10 Supreme Court Cases 99; *Rashtriya Mazdoor v State of U.P. and another* (2017).

²² (n 1) 473.

‘delivery of goods’ and ‘passing of title’ are two separate events and it is not necessary that title in goods is transferred when the delivery is made to the buyer. In this regard, the Court relied on several cases such as *Messrs Alfarooq Shipping Co. Ltd. v Messrs Vasa Shipping Co. Ltd. and 4 others*,²³ *Pakistan Mercantile Corporation Ltd. v Madan Mohan Oil Mills*,²⁴ *Commissioner of Income Tax v H.K.Patil*,²⁵ and *Ghulam Mustafa v Officer on Special Duty, Federal Land Commission and another*.²⁶ The Court further observed that, in terms of Section 32 of the Sale of Goods Act, the payment of price and the delivery of goods are concurrent unless otherwise agreed. Hence, the Court concluded, as a general rule, that payment must be made to the seller when the goods are delivered to the buyer.²⁷ [The relevant Rule—14(2)—addresses the specific timeline for this payment.]

The *intent* of the parties, the Court noted, is clear from the CPRs that were issued by the Sugar Mills to the cane growers. The CPRs evidence that the Sugar Mills have received the sugarcane and that the amount specified in the same is due to the cane grower. Since Rule 14(2) requires payment to be made within fifteen days, the issuance of the CPR is relevant to calculate the elapse of time for payment to the cane growers. The emphasis of the Court on the CPRs as an acknowledgement of the obligation to pay the cane growers is supplementary.²⁸ As the right of the cane growers is protected under the special statute, acknowledgment by the Sugar Mills as such (via the CPRs) is not required under the law.

The Court referred to Justice Antonin Scalia of the US Supreme Court²⁹ to opine that the words of the law are given meaning by their context, and the context includes the purpose of the law. According to Justice Scalia, the purpose must be derived from the text of the law, not from extrinsic sources, i.e. legislative history or the desire of the legal drafter. The purpose must be defined in a precise and concrete manner,

²³ 1980 CLC 1228.

²⁴ 1966 Dacca 181.

²⁵ 1994 PTD 330.

²⁶ 1984 CLC 824.

²⁷ (n 1) 475.

²⁸ *Ibid.*

²⁹ *Ibid*; Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (1st edn, West 2012).

helping the courts to determine which of the various textually permissible meanings should be adopted. The Court further relied on the judgment of the Indian Supreme Court in *National Workers' Union v P.R. Ramakrishnan*³⁰ to establish that the law must be construed in accordance with the needs of a changing society.³¹ In addition, the Court placed reliance on the principles of interpretation by a leading jurist, Francis Bennion,³² to argue that the law must be interpreted progressively to accommodate relevant changes in the society with reference to law, social conditions, and technology, etc. The Court emphasized that “[a]n enactment of former days is thus to be read today in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention....”³³

Likewise, the Court held that if the rights of the cane growers are not protected as envisaged under the Act and the Rules, the purpose and entire scheme of the law is defeated.³⁴ The purpose of requiring the cane grower to deliver sugarcane on credit is only to facilitate the interests of the Sugar Mills. The Court emphasized that this does not mean that the Act leaves the cane growers *without any remedy*. By specifying fifteen days’ time for the payment of the price, the law *intends* to protect the cane grower and ensure that his right to recover dues from the Sugar Mills remains intact.³⁵ The statutory regulations which cast obligations on the cane grower and the Sugar Mills are to be interpreted in order to advance the *purpose* of the statute in the present context, that is, to ensure that the

³⁰ (1983) 1 Supreme Court Cases 228.

³¹ (n 1) 475-76; “We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values. If the bark that protects the tree fails to grow and expand along with the tree, it will either choke the tree or if it is a living tree, it will shed that bark and grow a new living bark for itself. Similarly, if the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast-changing society and not lag behind.”

³² (n 1) 476; Francis Bennion, *Statutory Interpretation* (7th edn, LexisNexis 2017) 617.

³³ (n 1) 476.

³⁴ *Muhammad Hussain v Muhammad Ahmad* PLD 1970 Lah 140 (DB); *Spencer v State* 5 Ind. 41; Earl T. Crawford, *The Construction of Statutes* (Pakistan Law House 2014) 245.

³⁵ (n 1) 476-77.

required sugarcane is delivered to the Sugar Mills within a specified time and the cane grower receives the payment within the stipulated time.

The Court noted that Sections 13 and 16 of the Act and Rule 14 of the Rules give special treatment to the purchase transaction. Keeping in view the overall scheme and purpose of the law, and the statutory requirement of making payment within fifteen days, the Court construed that the unpaid seller/cane grower does not transfer *title* in the goods (sugarcane) until the payment is made. The Court held that “a statutory retention of title provision gives the unpaid seller of goods priority over other creditors (secured or unsecured) in the event that the buyer fails to pay for the delivered goods.”³⁶ Relying on a legal maxim *Nemo Dat Quod Non Habet Rule* (he who hath not cannot give), the Court specifically noted that the right of the unpaid seller to recover the price of goods is secure because “the buyer cannot transfer title or security interest over the goods since he does not have title in the goods.”³⁷

The Court examined the “retention of title clause” (RT) in a broader and modern socio-economic context and referred to a recent report on insolvency law in England that stated, “credit is the lifeblood of the modern industrialized economy.”³⁸ The Court highlighted the significance of the RT clause and held that where a trade creditor requiring security has little option but to rely on an RT clause, as is the case in England, the effectiveness of such a clause becomes extremely important.³⁹

The significance of RT clauses is that they give priority to the seller over all other creditors to recover amount as *owners*, and not as creditors. The retention of title ensures that payment is made to the seller even if the goods cannot be recovered, because the seller seeks to recover the value of his goods which he gave to the buyer on the condition that the price will be paid within a specified time. Hence, the *title* of the delivered goods is *retained* by the seller until the payment is made.

³⁶ (n 1) 478.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Rolf B. Johnson, ‘A Uniform Solution to Common Law Confusion: Retention of Title Under English and U.S. Law, (1994) 12 (1) *Berkeley Journal of International Law* 99, 100.

The RT clause is recognized in many jurisdictions such as England, the USA, Germany, Australia, and Hong Kong. Where the parties fail to stipulate an RT clause in their contract, the courts in these countries have read an *implied* RT clause into the law. The United States Court of Appeals for the Fourth Circuit in *Nickey Gregory Co., LLC v AGRICAP, LLC*⁴⁰ held that the Perishable Agriculture Commodities Act 1930 ('PACA') was enacted in order to suppress unfair business practices. It was amended in 1984 to provide credit protection to sellers of perishable commodities. Under the PACA, a trust for the benefit of the unpaid seller of the commodities was created and termed as a non-segregated floating trust, wherein title in the commodities stays with the unpaid seller, giving the seller the right of recovery, which right is superior to all other creditors. In another case, *Benny's Farm Fresh Produce, Inc. v Vine Ripe Texas*,⁴¹ it was found that the PACA trust includes all commodities received and all products derived from these commodities as well as any proceeds due from the sale of these commodities. The Court held that the PACA was designed to protect producers of perishable agricultural products, most of whom entrust their products to a buyer and are dependent upon the buyers' business acumen and fair dealing with respect to payment. Hence, to give effect to the *intent* of the law, the proceeds from the sale of the commodities were also to be held in trust until payment was made.⁴²

The Lahore High Court concluded that "the goods of the unpaid seller do not become part of the assets of the buyer until the payment is made. The buyer therefore cannot treat the goods as his own and create a security interest on them or sell them."⁴³ Hence, the Court noted that "the parties in a contract of sale for moveable items, agree impliedly on a retention of title [RT] structure which helps to bridge the gap between the written law and the practical reality."⁴⁴

In some cases, the goods lose their original identity and the RT clause is enlarged to cover the resulting products as well. In *Aluminum*

⁴⁰ 597 F.3d 591 (4th Cir. 2010).

⁴¹ Civil Action No. H-08-2669 (S.D. Tex. 29 June 2009).

⁴² (n 1) 480.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

Industries Vaassen B.V v Romalpa Aluminum Ltd,⁴⁵ the court interpreted the RT clause to trace ownership rights and the right to recover amounts due to the seller from the new/processed objects, giving priority over secured and unsecured creditors. The rights of the unpaid sellers have thus acquired an extended meaning and expanded understanding in international trade.

The RT clause was made applicable even when the goods were no longer identifiable or had lost their original identity to a new product. In *Weldtech Equipment Ltd*,⁴⁶ the enlarged RT clause was made applicable to the resale of goods supplied by the company. In *Tatung (U.K) Ltd. v Galex Telesure Ltd*,⁴⁷ the expanded RT clause was applied to sale proceeds even though the goods had lost their identity. In *Associated Alloys Pty Limited v CAN 001 452 106 PTY Ltd*,⁴⁸ the High Court of Australia held that the buyer was liable to pay the unpaid seller from the proceeds of the goods.⁴⁹ While relying on these cases, the Lahore High Court observed that “it is important to note that the cane grower seeks recovery of the price of the sugarcane as owner of the sugarcane, as the cane grower retains title in the sugarcane until payment is made, and not as a creditor.”⁵⁰

The Court noted stance of the cane growers that the pledgee cannot pledge the property of the owners with the Banks without their consent and knowledge. However, the Court observed that “the enforcement of the rights of the cane growers in no manner prejudices the rights of the secured creditor because the cane growers’ sugarcane could not have been pledged with the Banks in the first case.”⁵¹ The Court further held that “the right of the Banks to recover as a secured creditor remains intact and is enforceable in accordance with [the] law. However, the rights of the cane grower as owner of the sugarcane are enforceable under the Act and

⁴⁵ *Aluminum Industries Vaassen B.V v Romalpa Aluminum Ltd* [1976] 1 WLR 676.

⁴⁶ *Weldtech Equipment Ltd*. 1991 BCC 16 (Eng. Ch. 1990).

⁴⁷ *(U.K) Ltd. v Galex Telesure Ltd* 1989 BCC 325 (Eng. Q.B. 1988).

⁴⁸ *Associated Alloys Pty Limited v CAN 001 452 106 PTY Ltd* [2000] HCA 25.

⁴⁹ (n 1) 481-82.

⁵⁰ (n 1) 482.

⁵¹ *Ibid*.

the Rules which means its right to recover the price of the sugarcane will trump all other rights.”⁵²

With due respect, the Court appears to muddle the argument here. The Court *specifically* noted that “[t]he goods of the unpaid seller do not come into the ownership of the buyer until the payment is made. Hence, the goods do not become part of the assets of the buyer until payment is made. The buyer therefore [*cannot*] treat the goods as his own and create a security interest on them...”⁵³ When the Court finds that the title of the goods remains with the seller till the payment is made and that the buyer *cannot* pledge the goods (as titleholders) with the banks, then the pledge must have been held invalid. According to this, the right of the banks to recover as a secured creditor must therefore be reframed. However, the Court seems to have avoided to take this harsher view of the law to accommodate the claim of the banks considering the pledge as rolling/constructive in nature.

The Court further erred in observing that the Cane Commissioner can require that the bags of sugar produced by the cane of a specified cane grower be stored separately so as to identify the specific bags of sugar.⁵⁴ In this way, the Court seems to propose a mechanism of informal lien (on a certain number of bags of sugar) in favour of the cane growers against the price of the sugarcane; so that those bags of sugar could not be pledged, and in case of a default in payment by the Sugar Mills, the Cane Commissioner could sell those bags to pay the cane growers. According to the Court, the seller is entitled to recover the value of goods even from the sale proceeds of the new items, thus the identification or storage of specific bags of sugar, as an informal lien of the cane growers, is neither intended by the law nor is it in consonance with Court’s own argument.

The Court further noted that sanction letters issued by the banks reflect the obligation of the Sugar Mills to pay the cane growers, and that the banks, having recognized this obligation, were put to strict notice that the Sugar Mills owed the cane growers.⁵⁵ It may be stressed, again, that the right of the cane growers protected under the *statute* stands on strong

⁵² Ibid.

⁵³ (n 1) 480.

⁵⁴ (n 1) 483.

⁵⁵ Ibid.

legal footing; therefore, whether the banks or the Sugar Mills recognize or dispute the right of the cane growers does not matter in strict terms of the law.

The Court maintained that the banks' right to sell the pledged stock arises in the event of a default. The Court relied upon the judgment in *A.M. Burq and another v Central Exchange Bank Ltd. and others*⁵⁶ in support of this argument. According to the findings of the Court, the essential characteristic of the security interest of the pledgee, i.e. the bank, is (a) the right to possession of the goods and (b) the right to sell the goods in case of a default.⁵⁷ It may be argued that if the right of the banks over the pledged stock is held to be maintained and, at the same time, if the cane growers are declared entitled to recover the value of the sugarcane from the sale of the pledged stock (and are paid as such), it may create a legal anomaly in some cases. For example, if a sugar mill stops its operation (as it happened in case of Brother Sugar Mills), and the pledged stock is sold out to pay the cane growers, the banks would be *essentially* deprived of their right, as they would lose the ability to *possess* and *sell* the pledged stock to recover their debt. It amounts to nullifying both the legal ingredients of the pledge (right to possession and right to sell in case of default).

In such a case, the Court should have clarified, at least, the extent of the right of the cane growers as well as the banks to recover their due amounts. Otherwise, one of the claimants would be bound to suffer without having any effective legal remedy to recover its amount. In this context, the banks could have been given *limited* right on the pledged stock as the Sugar Mills could not have created a pledge over the property of the cane growers (the value of the sugar cane); the pledged stock remains the property of the cane growers as *owners*, therefore, the sale proceeds to that extent would go, at priority, to the cane growers. The remaining amount if any, will go to the banks. The Court could have elaborated these points to make this judgement clearer and more effective.

The Court observed that the banks require the Sugar Mills to maintain the stock value of the pledge to ensure the security is intact. The

⁵⁶ *A.M. Burq and another v Central Exchange Bank Ltd. and others* PLD 1966 Lah 1.

⁵⁷ (n 1) 484.

quantity of the pledged stock keeps fluctuating, so the banks require that the *value* of their pledged stock is retained. As such, the banks maintain “constructive possession” of the pledged stock. The pledger can thus utilize the pledged stock in the ordinary course of business. The Court, relying on *Messrs World Trans Logistics and others v Silk Bank Limited and others*,⁵⁸ argued that in the normal course of business the character of the pledge remains intact even if the stock position keeps changing. The security interest of the banks (i.e. the value of the stock) does not diminish even if the stock position is not maintained by the Sugar Mills, so the banks can recover their debt in the event of default.⁵⁹

Finally, the main question is whether the banks are entitled to recover their debt from the pledged stock. In this regard, the Court noted that as banks have filed recovery suits before the court of competent jurisdiction and, when a suit is decreed, the competent court has the power to recover amounts secured by way of pledge. The satisfaction of the decree by the sale of the pledged stock will thus be overseen by the competent court. Hence, the Court concluded that the right of the banks is not prejudiced. Finally, the Court held that the right of the cane growers as the owner of the sugarcane is a superior right to all other rights and, in order to ensure that the purpose of the Act is fulfilled, the cane grower must be paid the value of the sugarcane.⁶⁰

Conclusion

In this landmark judgment, the LHC has conclusively established the right of cane growers as a superior right over all other rights of secured or unsecured creditors. The Court, while relying on jurisprudence from various jurisdictions, eloquently distinguished the right of sellers/owners from the right of creditors. References to the judgments of the superior courts from other countries, and renowned jurists make this judgment a unique contribution to our domestic jurisprudence. The Court, for the first time, has made a thorough analysis of the Act and the Rules, providing solid reasoning for the protection of the right of the sellers as owners. Moreover, the Court has creatively attempted to fill in the gaps in the Act

⁵⁸ *Messrs World Trans Logistics and others v Silk Bank Limited and others* 2016 SCMR 800.

⁵⁹ (n 1) 485.

⁶⁰ (n 1) 485-86.

and the Rules through a progressive and purposive interpretation of the law. However, the legislature should update such an out-dated law to protect the rights of the cane growers and to promote the industry.