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THE HIGH COURT OF SINDH AT KARACHI

No.: 1391/MIT-II/Ind Appeal No. 203/2019

Dated: 25.08.2023

THROUGH EMAIL

From:

Member Inspection Team-II,
High Court of Sindh, Karachi.

To,

The learned Magistrates in all districts of Sindh

Through: Learned District & Sessions Judges in all districts of Sindh.

SUBJECT: IInd APPEAL NO. 203/2019

I am sending copy of order dated 22-08-2023 passed by this Hon'ble Court in the subject case along with copy of "The Sindh Prohibition of Interest on Private Loan Act, 2023" for information and necessary compliance.



**(Suhail Muhammad Laghari)
Member Inspection Team-II**

Enclosed as above.

4578
24.8.23

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
II-Appeal No.203 of 2019

Date

Order with signature of Judge

1. For orders on office objection.
2. For hearing of CMA No. 6143 of 2019. (Stay/A)
3. For hearing of main case.

22nd August 2023

Mr. Adnan Ali, advocate for respondent No.1

Mr. Pervez Ahmed Mastoi, AAG

Mr. Ali Ahmed Baloch, Law Secretary, Law Department, Government of Sindh

Mr. Abdul Sattar Pathan and Dr. Liaquat Ali Abro, Law Officers, Law Department, Government of Sindh

Wahid Mastoi
AM
24/8/23

Salahuddin Panhwar, J:- Secretary Law, Government of Sindh present submits a statement appended with "The Sindh Prohibition of Interest on Private Loan Act, 2023", which has been enacted and notified in the Gazette Notification and is now in the field to be implemented by the respective authorities. The enactment of Act 2023 has been made in order to make it possible to prosecute those person(s) who collect interest by taking advantage of people's compulsion, whereas injunctions of Islam as laid down in the Holy Quran and Sunnah have explicitly and unequivocally prohibited charging interest on loans. In the Act 2023, comprehensive legislation on the subject has been made for covering all the aspects of the mischief of private money lending by prohibiting the business and practices of private money lending and advancing loans and transactions in Sindh, and in respect of matters ancillary thereto. Section 3(1) of the Act 2023 prohibits that no moneylender, either individually or in a group of persons, shall lend money for cars or any other purpose or advance loan to any person for the purpose of receiving interest thereon, nor shall carry on an interest-based transaction in Sindh. Whoever contravenes these provisions, either directly or indirectly, shall be punished with imprisonment of either description which may extend to 10 years, but shall not be less than three years, and shall also be liable to fine not exceeding Rs.1 Million. The same penalty applies to those who intentionally and willfully abet, engage, assist or aid the moneylender. Offence under this Act shall be cognizable, non-

received order 03 pages 24.8.23

compoundable and non-bailable. However, complaint of such offence shall be made to the concerned Station House Officer for registration of the case against such person or group of persons under Section 6 of the Act 2023. Thus, strict compliance of above section is need of the hour.

Accordingly, in order to curb such illegal practice of usury and to save the innocent peoples, Inspector General of Police (I.G. Police Sindh) is directed to ensure compliance of Section 6 of Act 2023 and in this regard, he shall communicate instructions to all SSPs for strict compliance of the directives contained in the Act 2023. Secretary Home Department, Government of Sindh shall also issue the required directions as provided under the Act to all Deputy Commissioners as well and shall ensure a serious crackdown against usury and shall take action against delinquents, who are in the business of private loaning, which is an offence under the present enactment. Secretary Law, present, is appreciated by this Court for the efforts taken by them, though this Court passed the initial order on 20th January 2021 in MA No. 65 of 2018.

Accordingly, compliance has been made. Home Secretary shall ensure that rules as required under section 16 of Act 2023 are framed within two months with compliance report. In case of failure, Home Secretary shall be in attendance. Moreover, Home Secretary shall ensure that this law shall be communicated to public at large through print and electronic media by taking all requisite formalities. To come up on 26.09.2023 at 11:00 a.m. Meanwhile, Home Secretary, Government of Sindh and I.G.P Sindh shall submit interim report/progress report on crackdown against usury in all over Sindh. Learned MIT-II shall communicate above referred enactment to all Magistrate(s) for information. Attendance of Law Secretary and Law officers is dispensed with.

Certified to be true copy,

Sd/-SALAHUDDIN PANHWAR
JUDGE

Assistant Registrar (Civil/Writ SB)

Ind Appeal 203/2019

Karachi, dated: August 24th, 2023

Copy forwarded for information and compliance to:

- ✓ The Learned MIT-II of this Honourable Court.
- The Home Secretary, Government of Sindh, Karachi.
- The IGP Sindh, Karachi.

Assistant Registrar (Civil / Writ SB)

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IN THE HIGH COURT OF SINDH KARACHI

IIInd Appeal No. 203 of 2019

Mst.Hasnia Daughter of Abdul Raheem
Muslim Adult, Resident of
House No. L-1650, Block -1,
Sector-14/A, Metroville,
K.D.A, Scheme -33 Karachi.....Appellant

VERSUS

1. **Muhammad Sadiq Abbasi**
Son of Ali Bahadur Abbasi
Muslim, Adult, Resident of
132, Rizwan Society,
Main university Road Scheme -33
Karachi
2. **Vth Senior Civil Judge**
Karachi (East)
3. **XIth Additional District Judge Karachi -East.**

SECOND APPEAL UNDER SECTION 100 CPC



EXTRAORDINARY

Registered No. M324



The Sindh Government Gazette

Published by Authority

KARACHI TUESDAY JULY 18, 2023

PART-IV

PROVINCIAL ASSEMBLY OF SINDH
NOTIFICATION
KARACHI, THE 17TH JULY, 2023.

NO.PAS/LEGIS-B-01/2023-The Sindh Prohibition of Interest on Private Loans Bill, 2023 having been passed by the Provincial Assembly of Sindh on 09th June, 2023 and assented to by the Governor of Sindh on 10th July, 2023 is hereby published as an Act of the Legislature of Sindh.

THE SINDH PROHIBITION OF INTEREST ON PRIVATE LOANS ACT, 2023

SINDH ACT NO. XXIII OF 2023.

AN
ACT

to provide for the prohibition of the business and practices of private money-lending and advancing loans and transactions based on interest, in the Province of Sindh.

WHEREAS the injunctions of Islam as laid down in the Holy Quran and Sunnah have explicitly and unequivocally prohibited charging interest on loans and **Allah and Prophet Muhammad (SAW)(PBUH)** have declared war against those who do not abandon interest.

Preamble.

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(286)

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AND WHEREAS it is expedient to make a comprehensive legislation on the subject for covering all the aspects of the mischief of private money lending by prohibiting the business and practices of private money lending and advancing loans and transactions in the Province of Sindh and to provide for matters ancillary thereto;

It is hereby enacted as follows:-

1. (1) This Act may be called the Sindh Prohibition of Interest on Private Loans Act, 2023.
Short title, extent and commencement.

(2) It shall extend to the whole of the Province of Sindh.

(3) It shall come into force at once.

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

(a) "abetment" has the same meaning as assigned to it in section 107 of the Pakistan Penal Code 1860 (Act XLV of 1860);

(b) "borrower" or "debtor" means a person to whom a loan is advanced;

(c) "Code" means the Code of Criminal Procedure, 1898 (Act No. V of 1898);

(d) "financial institution" includes the State Bank of Pakistan, a commercial or investment bank, a leasing company, a modaraba or other concerns, so defined in terms of section 2(a) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (Ordinance No. XLVI of 2001);

(e) "Government" means the Government of Sindh;

(f) "interest" includes any amount, big or small, over the principal, in a contract of loan or debt, regardless of whether the loan is taken for purpose of consumption or for some production activity, whether the same is charged or sought to be recovered specifically, by way of interest or otherwise, or found so to be recoverable by a competent Court;

- (g) "Interest based transactions" includes transactions -
- (i) where differences in prices are exchanged without any intention of exchange of goods by the parties involved; or
 - (ii) where sale is made on credit for higher price and repurchase of the same for lower price on cash, basis by the original owner in a given transaction; or
 - (iii) where two prices are stipulated in the same deal that is to charge lower or discounted price for shorter period or given listed price, for longer period by the buyer in a given transaction;
- (h) "loan or debt" means an advance whether of money or in kind **or commodities or goods**, where the repayment is guaranteed on demand or after a specified period;
- (i) "molest", a person shall be deemed to molest another person, if he-
- (i) obstructs, or uses violence or criminal force to or criminally intimidates, such other person;
 - (ii) Interferes with any property owned or used by him or deprives him of, or hinders him in the use of any such property; and
 - (iii) does any act calculated to intimidate the members of the family or such other person;
- (j) "money lender" means a person, other than the Federal or Provincial Government or a financial institution, who lends money on interest or deals in interest based transactions and includes any person appointed by him to be in charge of a branch office or offices or a liaison office or any other office by whatever name called, of his principal place of business and a pawn broker who carries on the business of taking goods and chattels in pawn or pledge for a loan, offering payday loans, small personal loans or credit chits.

Explanation:- Where a money lender is resident outside the province, the agent of such person resident in the Province, shall be deemed to be the money lender, in respect of that business for the purposes of this Act;

(k) "prescribed" means prescribed by rules under this Act;

(l) "principal amount" in relation to loan means the amount actually lent to the debt or;

(m) "Province" means the Province of Sindh; and

(n) "rules" means rules made under this Act.

3. (1) No money lender either individually or in group of persons shall lend money for vehicles or any other purpose or advance loan to any person for the purpose of receiving interest thereon, nor shall carry on an interest based transaction in the Province.

(2) Whoever contravenes the provisions of sub-section (1), either directly or indirectly, shall be punished with imprisonment of either description which may extend to ten years but shall not be less than three years and shall also be liable to fine not exceeding one million rupees.

4. Whoever intentionally and willfully abets, engages, assists or aids the money lender in lending money or in recovery of interest or in interest based transaction in contravention of sub-section (1) of section 3 shall also be liable to the same punishment as provided in sub-section (2) of section 3 of this Act.

5. Whoever harasses any borrower or debtor, whether on his own or on behalf of anybody else with the intention to force such borrower or debtor to pay back any loan or debt or any part thereof or any interest thereupon, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine up to five hundred thousand rupees.

6. A complaint may be filed with the concerned Station House Officer, in case of non-response by the concerned police, a complaint shall be filed to the Justice of Peace who within three days on receipt of any application or complaint with regards to the commission of an offence under this Act, order the local police to register a case against such person or group of persons.

Punishment for harassment.

Punishment for abetment.

Prohibition of Private Money Lending.

7. On the commencement of this Act, every obligation of any debtor or borrower to pay interest on debtor such part of interest shall stand extinguished. **Liability to pay interest on debt to stand extinguished.**
8. No Court inferior to that of Judicial Magistrate of the First Class shall try an offence under this Act. **Offences to be tried by Court.**
9. Notwithstanding anything to the contrary contained in the Code or any other law for the time being in force an offence under this Act shall be cognizable, non-compoundable and non-bail able. **Cognizance of offences.**
10. The trial court, if it is proved that the money lender committed an offence under this Act, shall order that the interest already paid to the money lender is considered as payment towards the *principal amount*. **Adjustment of principal amount.**
11. Where penalty imposed on money lender under this Act or the amount ordered to be returned, is not paid- **Recovery of sums.**
- (a) The Court may order to recover the amount so payable by selling the assets belonging to such person; and
- (b) in case the amount cannot be recovered from such person in the manner provided in clause (a), the Court may prepare and sign a certificate specifying the amount due from such person and send it to the Collector of the District in which such person owns any property or resides or carries on business, and the Collector of the District on receipt of such certificate shall proceed to recover from the said person the amount specified in the certificate as if it is an arrear of land revenue.
12. Save as provided, any person aggrieved by any decision given, sentence passed or order made by the trial court under this Act, may within thirty days of such decision, sentence or order, prefer an appeal under the provisions contained in Chapter XXXI of the Code. **Appeal.**
13. (1) Where any lender, whether a money lender as defined in this Act or otherwise, refuses to accept the whole or any portion of the money or other property due in respect of his loan without payment of interest, the debtor may deposit the said money or property into the Court having jurisdiction to entertain a suit for recovery of such loan and apply to the Court record full or part satisfaction of the loan, as the case may be. **Power to deposit in Court money due on loan.**

(2) Where any such application is made, the Court shall, after due inquiry, pass orders recording full or part-satisfaction of the loan as the case may be.

(3) The procedure laid down in the Code of Civil Procedure 1908 (Act No. V of 1908), for the trial of suits shall, as far as may be, apply to applications under this section.

(4) An appeal shall lie from an order passed by a Court under sub-section (2) within thirty days excluding the time for obtaining a certified copy of the order as if such an order relates to the execution, discharge or satisfaction of a decree within the meaning of section 47 of the Code of Civil Procedure, 1908 (Act No. V of 1908).

14. The provisions of this Act shall have overriding effect notwithstanding anything contained in any other law or other laws, Act to override etc.

15. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made there under.

16. Government may make rules within ninety days for Power to make carrying out the purposes of this Act. rules.

17. In the interpretation and application of the provisions of this Act, and in respect of matter ancillary thereto, the Court shall be guided by the injunctions of Islam as laid down in the Holy Quran and Sunnah.

BY ORDER OF THE SPEAKER
PROVINCIAL ASSEMBLY OF SINDH

G.M.UMAR FAROOQ
SECRETARY
PROVINCIAL ASSEMBLY OF SINDH