

**2018 C L D 626**

**[Lahore]**

**Before Ayesha A. Malik, J**

**AL-BARAKA BANK (PAKISTAN) LTD.---Petitioner**

**Versus**

**PROVINCE OF PUNJAB through Secretary Food and others---Respondents**

Writ Petition No.4562 of 2016, decided on 12th April, 2018.

**(a) Punjab Sugar Factories Control Act (XXII of 1950)---**

---Ss.13, 16 & 23---Punjab Sugar Factories Control Rules, 1950, Rr.14 & 13--- Constitution of Pakistan, Art. 199---Supply of sugarcane to sugar factories/mills---Role of Cane Commissioner---Payment to sugarcane growers within statutorily prescribed time---Statutory retention of title in favour of sugar cane growers after delivery of sugarcane to sugar mills---Superior statutory right of sugarcane growers for recovery of their dues from sugar mills, over secured creditors, such as Banks / Financial institutions---Scope---Question before High Court was whether bags of sugar pledged to Banks/Financial institutions by sugar mills, were amenable to sale by Cane Commissioner whilst exercising powers under the Punjab Sugar Factories Control Act, 1950 in order to satisfy the statutory right of sugarcane growers who had not been paid for sugarcane by Sugar Mills within prescribed statutory period and whether such sugarcane growers had a superior right of recovery over secured creditors---Held, that intent of Punjab Sugar Factories Control Act, 1950 and Rules framed thereunder, in specifying time of 15 days for payment to sugarcane growers was to ensure that cane growers were paid and that price owed to the cane grower was not only secured but also remained enforceable under the Punjab Sugar Factories Control Act, 1950---While recognizing ownership rights of cane growers, Punjab Sugar Factories Control Act, 1950 recognized that a debt was created with respect to price of sugarcane in favour of the cane grower which must be paid within fifteen days and consequently by construing such requirement to be a statutory retention of title clause in favour of the cane grower, special purpose of the Punjab Sugar Factories Control Act, 1950 was achieved---Sections 13 & 16 of the Punjab Sugar Factories Control Act, 1950 and R.14 of Punjab Sugar Factories Control Rules, 1950 gave special treatment to these purchase transaction(s), such that a unpaid cane grower did not transfer title in sugarcane supplied until payment was made in order to ensure compliance of the statutory condition to make payment in fifteen days---High Court observed that a statutory retention of title provision gave the unpaid seller of goods priority over other creditors (secured or unsecured) in the event that buyer failed to pay for the delivered goods, and as such cane growers sought enforcement of their right(s) as owners of the sugarcane---High Court further observed that enforcement of right of sugarcane growers did not prejudice rights of secured creditors (Banks) as the cane growers' sugar could not have been pledged with Banks in the first case; and that the sugarcane

growers had necessary security by virtue of law to ensure payment for sugarcane delivered---Constitutional petition was allowed, accordingly.

[Case-law referred]

### **(b) Sale of Goods Act (III of 1930)---**

---Ss. 32, 21,22,23 & 24---Payment and delivery of goods---Passing of title of goods--  
-Concept of delivery and passing of title under Sale of Goods Act, 1930---Scope---  
Delivery of goods and passing of title of such goods, were two separate events and it  
was not necessary that title was transferred when delivery was made to a buyer---  
Under Sale of Goods Act, 1930 payment and delivery were concurrent in terms of S.32  
whereby unless otherwise agreed, a buyer must pay the seller when possession of  
goods was taken---General rule was that unless otherwise intended, payment must be  
made when the goods were delivered.

[Case-law referred]

### **(c) Interpretation of statutes---**

---Purpose of a statute/intent of the law---Construction---Intent of the law must be  
construed in context of the purpose of the Act and rights and obligations created under  
the Act---Construction of intent of the law must be such that it gave effect to meaning  
of the law---Words in a statute were given meaning to by their context and such  
context included the purpose of the law---Purpose must be derived from the text, not  
from extrinsic sources such as Legislative history or an assumption about the legal  
drafter's desire---Purpose must be defined precisely and not in a fashion that smuggled  
in the answer to the question before the decision-maker and purpose was to be  
described as concretely as possible and not abstractly---Purpose of a statute shed light  
on deciding which of the various textually permissible meanings should be adopted.

[Case-law referred]

### **(d) Maxim---**

---Nemo dat qui non habet (he who has not, cannot give)---Rights of unpaid seller(s)  
under the law---Retention of title clause(s)---Retention of ownership title with unpaid  
seller(s) after delivery of goods---Priority of unpaid sellers over other creditors,  
including secured creditors---Recognition of retention of title clauses as commercially  
viable way to do business on credit---Concept and scope of retention of title clauses  
and rights of unpaid sellers discussed in light of case-law from various jurisdictions.

[Case-law referred]

Nasar Ahmad and Shazib Masud, Syed Ali Zafar, Mubashar Aslam Zar, Ahmed Pervaiz, Malik Akhtar Javed and Ali Raza Kabir, Ali Ameel Parvez Malik, Syed Hammad Yousaf Gillani, Abdul Hameed Chohan and Sajjad Ali for Banks/Petitioners.

Barrister Rafay Altaf, Ch.Nisar Ahmad Anjum, Asad Jamal Akbar, Muhammad Abdullah Aslam Chaudhary, Amjad Iqbal Khan, Syed Afzal Shah Bukhari, Rai Khurram Mehmood, Ch. Muhammad Asghar, M. Amir Latif Sehr Bhutta, Sardar Zulfiqar Umer Khan Thaheem, Ch. Muhammad Nabeel Ashraf, Rana Mustansar Asif, Rana Muhammad Hussain, Mian M. Hussain Bodla, Shahid Masood Khan, Ch. Faiz-e-Rasool Sidhu, Ch. Akbar Ali Tahir, Mahar Fazal ur Rehman, Sh. Aftab Umar, Munawar Ali Sidhu, Sardar Liaqat Ali Dogar, Muhammad Jahangir Asif, Ch. Muhammad Hussain, Muhammad Anwar Khan and Malik Zulfiqar Ali Khokhar for Cane Growers/Petitioners.

Anwaar Hussain, Additional Advocate General, Mrs. Samia Khalid, Additional Advocate General, Ahmad Hassan Khan, AAG along with Waqas Alam, Cane Commissioner, Punjab and Syed Sibte Hassan Sherazi, Assistant Cane Commissioner, Punjab for Respondents.

Mian Junaid Razzaq, Hammad Khalid Butt and Sardar Tahir Naseem, for Respondent Brother Sugar Mills.

Arshad Nazir Mirza, for Respondent Pattoki Sugar Mills (in W.Ps. Nos.63883/17 and 64911/17.

Date of hearing: 24th November, 2017

## **JUDGMENT**

**AYESHA A. MALIK, J.**---This judgment decides upon the issues raised in the instant Petition as well as the connected petitions detailed in Schedule "A" and "B", appended with this judgment, as all the petitions raise common questions of law and facts.

2. There are two sets of Petitioners before the Court, cane growers and Banks. The common Respondents before the Court are the Cane Commissioner, Punjab and three sugar mills being Brother Sugar Mills, Darya Khan Sugar Mills and Pattoki Sugar Mills ("the Sugar Mills").

3. The case of the cane growers is that they supplied sugarcane to the respective Sugar Mills for the year 2014-15 and 2016-17 yet no payment has been made to them. In this regard, their debt has been verified by the Cane Commissioner, Punjab yet no payment has been made to them. It was argued that the cane growers earn their bread and butter from payment of sugarcane delivered to the Sugar Mills. That the cane growers have fulfilled their obligation of supplying sugarcane to the Sugar Mills, however the Sugar Mills have not fulfilled their obligation to make payment for the sugarcane delivered. It was also alleged that this has become regular practice that payments are delayed and that the cane growers are compelled to approach the Cane Commissioner and the courts for payments due to them. In these cases since the Sugar Mills refused to make payment to the cane growers, the Cane Commissioner took action under the Punjab Sugar Factories Control Act, 1950 ("Act") read with the Punjab Sugar Factories Control Rules, 1950 ("Rules") whereby bags of sugar lying in the godowns of the Sugar Mills were seized so as to sell them, in order to settle the debt of the cane

growers. The learned counsel also argued that it is a gross violation of their fundamental right to do business and earn their livelihood, protected under the Constitution of Islamic Republic of Pakistan, 1973 as the Sugar Mills have taken the sugarcane from the cane growers, produced tons of bags of sugar, yet made no payment to the cane growers.

4. In the cases of the cane growers, who are to receive payment from Brother Sugar Mills, it was argued that if the amount which is lying in the custody of the Court from the sale of the bags of sugar is handed over to the Banks there is no chance of recovering any amount from the said sugar mill as it stopped operations in 2016 and all its assets have since been mortgaged with the Bank. It is important to note that the bags of sugar lying with Brother Sugar Mills in W.P. No.4562/2016 filed by Al-Baraka Bank (Pakistan) Limited were auctioned under the supervision of this Court vide order dated 21.03.2017 and the amount has been placed in the custody of the Deputy Registrar (Judicial) of this Court. So far as Darya Khan Sugar Mills and Pattoki Sugar Mills are concerned, the possession of the bags of sugar has been restored in favour of the Banks vide interim orders dated 14.9.2017 and 29.8.2017 passed in W.Ps. Nos.67851 and 63883 of 2017. It is also maintained that through a lengthy exercise this Court has verified the claims of all the cane growers before the Court, with respect to amounts due to them and a detailed report has been filed by the Cane Commissioner which is not disputed by the Sugar Mills.

5. The case of the Banks is that the Sugar Mills before the Court have pledged bags of sugar with the Banks against finance facilities availed by them and the creation of the pledge is not denied. The Cane Commissioner illegally and unlawfully evicted the respective muqadams of the Banks and forcibly took possession of the bags of sugar lying in the godowns of the Sugar Mills. The Banks have challenged the orders of the Cane Commissioner who seized the bags of sugar to satisfy the debt of the cane growers. It is their stance that the bags of sugar being pledged stock are in the possession of the Banks, who are secured creditors and no claimant including the cane growers has a right superior to that of the Bank. That the Bank is a secured creditor and has preferential rights which cannot be defeated by any claim especially that of an unsecured creditor such as the cane growers. Learned counsel for the Banks argued that the Banks in terms of section 173 of the Contract Act, 1872 ("Contract Act") have the right to retain the pledged bags of sugar and keep it in their possession until the repayment of the debt. In the event that there is a default, the Bank can recover its debt under the Contract Act through sale of the pledged stock, without recourse to the courts. Hence the Bank must always retain possession over the bags of sugar in order to maintain its security against finances availed. Essentially the counsel argued that the pledged security is a continuing security until all sums are paid to the Banks and the Banks are secured creditors consequent to the pledge.

6. On behalf of the Cane Commissioner, Punjab, Mrs. Samia Khalid, Additional Advocate General argued that the cane growers are before the Court for the protection of their statutory right whereas the Banks are before the Court for the protection of their contractual rights. She argued that the Cane Commissioner is obligated under the Act and the Rules to ensure payment is given to the cane growers for the sugarcane supplied and in the event that the sugar mill defaults in paying the cane grower, the

Cane Commissioner has specific powers under the Act and the Rules to take necessary action in order to settle the debt of the growers. She argued that it was incumbent upon the Banks before creating the pledge, to ensure that the Sugar Mills have no liability against the bags of sugar offered for pledge especially with reference to payment of the cane growers. She further argued that in these cases the Banks extended finance facilities to the Sugar Mills to pay the cane growers, however the Sugar Mills did not utilize the funds as per its given purpose and the cane growers were never paid. She clarified that the amount sought by the cane growers is not a government due and the role of the Cane Commissioner is the performance of his statutory obligation. It is her submission that the law provides for a mechanism to be adopted by the Cane Commissioner to recover payments for the cane growers in the event of default. This obligation of the Cane Commissioner does not translate into recovery of government dues. Moreover the purpose of the Act and the Rules must be given effect to by the Courts in order to ensure that the cane grower does not suffer at the hands of the Sugar Mills and the Banks.

7. On behalf of Brother Sugar Mills, the Counsel did not deny the claim of the cane growers, however it is their contention that against the sale proceeds lying in the custody of this Court all amounts should be given to the Banks to settle the debts of the sugar mill and that the cane growers have no right to claim the price of the sugarcane from the pledged stock of the Banks. He explained that in terms of order dated 24.6.2016 in W.P. No.4562/2016 the total amount claimed by the cane growers is around Rs.820 million and the amount claimed by the Banks is more than Rs.800 million. That the sugarcane bags were auctioned by the orders of this Court and some stock of brown sugar remains to be auctioned. The counsel adopted the arguments of the Banks and pressed for release of all amounts in favour of the Bank.

8. From what has been argued before the Court, the basic issue which needs to be decided is whether the cane growers are entitled to recover amounts due to them through sale of bags of sugar by the Cane Commissioner under the Act or whether the Banks have priority over the bags of sugar for the settlement of their debt. In this regard, it is also in issue that if the bags of sugar are sold, priority of payment out of the sale proceeds, will be given to the Banks and not to the cane growers. Furthermore the parties dispute the role of the Cane Commissioner and whether the Cane Commissioner can forcibly take possession of bags of sugar, in order to settle the debt of the cane growers. In order to resolve the disputes before the Court, it is necessary to first understand the nature of the rights sought to be protected and enforced.

### **Right of the Banks**

9. The case of the Banks is that the Sugar Mills pledged bags of sugar with them, hence by virtue of being a secured creditor they have the right to retain possession of the bags of sugar and the right to sell the bags to recover amounts due to them against the finance facilities availed. The right of the Banks is provided under section 172 of the Contract Act which defines and prescribes the conditions applicable to a pledge such that it is the bailment of goods as security for payment of debt. Bailment as per section 148 of the Contract Act is the delivery of goods by one person to another person, which goods are either returned or otherwise disposed of as per the direction of

the person delivering them. Effectively bailment is for a purpose and includes the power to retain the goods until the purpose for which delivery was given is achieved. Therefore section 172 read with section 148 of the Contract Act establishes the conditions for creation of a pledge such that the delivery of goods is necessary and that the pledgee retains the right to keep possession of the goods till repayment of the debt. Section 173 of the Contract Act gives the pledgee the right to retain the pledged goods, meaning thereby that the Bank has the right to retain the bags of sugar in their possession until the repayment of the debt. Hence the basic contention of the Banks is that the pledged stock maintained in the godowns of the Sugar Mills cannot be sold by the Cane Commissioner for settlement of any debt of the cane growers as the pledge of the bags of sugar in favour of the Banks is protected under the law. The other argument of the Banks is that they are all secured creditors whose rights are protected under the law and can only be curtailed if there is any other secured creditor who has priority or preference over the right of the Banks. In this case the debt of the cane grower, as argued by the Counsel for the Banks, is an unsecured debt meaning thereby that the cane growers do not have preference over the rights of the Banks. Reliance is placed on the case *The Bank of Bihar v. The State of Bihar and others* (AIR 1971 SC 1210). It was also argued that the Act does not give the cane grower any priority over secured creditors and that even the general law does not give them priority. That at best the debt of the cane grower is a government due, which does not get preferential rights over secured creditors. Reliance is placed on *Messrs Industrial Development Bank of Pakistan v. M/s Maida Limited and others* (1994 SCMR 2248), *United Bank Limited v. P.I.C.I.C and others* (1992 SCMR 1731) and *Collector of Customs, Karachi v. Naya Daur Motors (Pvt.) Ltd. and others* (2015 SCMR 1376).

10. In terms of the law laid down by the august Supreme Court of Pakistan in 1992 SCMR 1731 (supra) a secured creditor is free to deal with its security and to realize it for the repayment of the debt as it chooses. Furthermore a secured creditor has first priority for recovery of its dues from the sale of the security, in this case being pledged goods and that even government dues do not get preference over secured creditors. Reliance is placed on *In Re: Saifee Development Corporation Ltd.* (1989 MLD 3909), *Orix Leasing Pakistan Limited v. Sunshine Cloth Limited* (2001 PTD 3146), *Polyolefins Industries Ltd. (In liquidation) v. Kosmek Plastics Manufacturing Co. Ltd.* (2002 PTD 1638) and 2015 SCMR 1376 (supra). The gist of the law from the cases relied upon is that the pledged goods cannot be attached or sold for the satisfaction of claims other than the claim of the Bank being a secured creditor. Therefore, as per what was argued, the Banks' case is that the Cane Commissioner could not seize the bags of sugar because they have been pledged with the Banks and if the pledged bags are sold then the sale proceeds will be given to the Banks by way of priority over all other claimants. Hence the Banks seek protection and enforcement of their rights as pledgees under the Contract Act and seek priority as secured creditors in terms of the law pronounced by the august Supreme Court of Pakistan.

### **Right of the Cane Growers**

11. As per the arguments of Mrs. Samia Khalid, Additional Advocate General, Sections 13 and 16 of the Act read with Rule 14(2) of the Rules imposes a statutory duty on the sugar mill to pay the cane grower the price of the sugarcane within fifteen days of

delivery of the cane. She argued that sugar is an essential crop and that the sugar industry is regulated by a special law. That the supply of sugarcane and the payment of the said supply is an integral part of the whole transaction which is regulated under the Act. She argued that the purpose of the Act is to ensure that supply and payment of sugarcane is made. Hence the cane growers have a statutory right to receive the price of the sugarcane, within fifteen days of delivery, in accordance with the mandate of the Act and the Rules. Syed Ali Zafar, Advocate differed with this view and argued that Rule 14(2) does not confer a statutory obligation on the sugar mill nor do the Rules give the Cane Commissioner the right to recover payments due to the cane grower. As per his arguments Rule 14(2) merely confirms a contractual obligation of the sugar mill to make payment for the sugarcane supplied. He also argued that Rule 14 does not give priority to the cane growers over the rights of the secured creditors being the Banks. Hence as per his arguments the obligation to pay the cane growers is contained in the agreement between the parties for supply of cane at a given price and the cane growers have a contractual right to receive payment. Consequently in the event of non-payment the cane growers' remedy, at best is a suit for recovery of amounts due.

12. Mr. Anwaar Hussain, Additional Advocate General argued that the Act and the Rules provide for a comprehensive procedure for delivery and payment of sugarcane because the lawmaker needed to balance the relationship between the cane grower and the sugar mill. The cane growers do not have any bargaining power as they have to deliver sugarcane to the sugar mill. Under the circumstances the legislature deemed it necessary to protect the cane growers interest by ensuring that the minimum price for sugarcane is fixed by the Provincial Government and that the sugar mill pay that price to the cane grower without any deductions. In this regard the Cane Commissioner was given the required powers under section 6 of the Act to recover amounts due to the cane growers.

13. The relevant Act is the Punjab Sugar Factories Control Act, 1950 and the Rules framed thereunder. The preamble of the Act provides that the scope of the Act is to regulate the supply of sugarcane and the price at which the sugarcane may be purchased. As per section 6 of the Act, the Provincial Government may appoint any officer, not below the status of a Collector, to be a Cane Commissioner to exercise the powers and duties conferred upon him under the Act and all powers and duties that may be prescribed by the Provincial Government from time to time. In terms of the Act, the Cane Commissioner ensures that sugarcane is purchased by the sugar mill during a crushing season. In this regard, section 8 of the Act requires a sugar mill to inform the Cane Commissioner of its intent to start crushing, one month before the crushing season commences. As per the section, the crushing season begins on the 1st day of October and ends on the 30th day of June of the following year. Under section 9, the sugar mill must provide an estimate of the quantity of sugarcane it requires for a particular crushing season. In terms of Section 10, the Cane Commissioner confirms the request and once the quantity of sugarcane is confirmed, he may after consulting the Board, declare any area to be a reserved area for the purposes of supply of sugarcane to a particular sugar mill, during a particular crushing season. Under section 13 of the Act, the sugar mill is required to purchase quantified amount of sugarcane from the cane grower in the reserved area. The terms and conditions of the purchase are provided by the Cane Commissioner stipulating the quantity of cane to be delivered

within a prescribed time, at the agreed to price. The price is fixed by the Government of Punjab through a notification in terms of section 16 of the Act. Furthermore sugarcane from a reserved area must be purchased by the sugar mill and the cane grower must supply to the designated mills. The sugar mill is required to pay to the cane grower the amount fixed by the Provincial Government as the price of sugarcane without any deductions. Section 16 of the Act specifically states that no deduction shall be made from the price of the sugarcane due to a cane grower. In terms of section 16-A, any person who fails to comply with the provisions of section 16 of the Act, shall be punishable with imprisonment which may extend up to two years or with fine which may extend to twice the price of the sugarcane or twice the amount of quality premium due, as the case may be.

14. The Rules were framed under section 23 of the Act. Rules 11 and 12 provide for the general provisions related to the purchase of sugarcane through a purchase centre and a licensed purchase agent. Rule 13 provides that the cane grower must receive the minimum price. In terms of Rule 14, the sugar mill must provide adequate facilities to the satisfaction of the Cane Commissioner for payment of the price of sugarcane and all payments for cane must be made within fifteen days of the delivery of sugarcane. Payment is to be made on the basis of the recorded weight, directly to the cane grower and the occupier or purchasing agent shall be liable for all payments due for sugarcane supplied to him or on his behalf. In case a purchasing agent fails to make payment for the sugarcane purchased, the sugar mill shall be responsible for making such payments. Rule 14(6) provides that no deduction shall be made by way of fine or otherwise from the price of the sugarcane purchased, which would reduce such price to a figure below the prescribed rate. The only amount that can be deducted is a loan amount given to a grower to help with the cultivation. In case payment is not cleared within fifteen days, the occupier or purchasing agent shall be liable to pay interest at the rate of eleven percent per annum.

15. In terms of the Act and the Rules, the supply of sugarcane for a particular crushing season is regulated such that the quantity of sugarcane to be supplied is fixed by the Cane Commissioner and the price for the sugarcane is fixed by the Provincial Government. The Act and the Rules provide for a rational distribution of sugarcane to sugar mills so as to ensure that the requirement for sugar is met with. The sugar mill is bound to pay the price fixed by the Government and can make no deduction from the notified price. The entire process for weighment including the scales and weights used is regulated under the Rules through the Cane Commissioner. The Act and the Rules ensure that sugarcane is supplied to the sugar mill during a given crushing season and that the cane grower is paid for the sugarcane at the notified price. The Act and the Rules set out the terms and conditions for the purchase of sugarcane and require the Cane Commissioner to ensure that the mill is supplied sugarcane on time and that the cane grower is paid in a timely manner. The terms and conditions of the purchase are prescribed under the Rules whereby Rules 13 and 14 deal with weighments, scales, weights, purchasing centres and payment requirements. The stated Rules protect the rights of the sugar mills who are guaranteed supply of the required sugarcane from a particular area and particular cane growers. Conversely the cane growers have agreed to supply sugarcane to a particular sugar mill at a given price and are ensured payment under the law. Therefore the right of the cane growers to receive payment is not

dependent on any contract or negotiated terms and conditions rather the Act requires the sugar mill to pay the price fixed by the Government under section 16 of the Act. Furthermore section 13(2)(3) and (4) requires the sugar mill to purchase the sugarcane from the cane grower on the prescribed terms and conditions which are provided for in the Rules. Hence the right to recover the price of the sugarcane is a statutory right and the cane growers before the Court seek protection of their statutory right to receive payment for the sugarcane purchased by the sugar mill.

16. One of the arguments raised by the Banks with reference to the nature of the cane growers right is that amounts due to the cane grower are government dues as the Cane Commissioner can only recover government dues, and government dues have no priority over the rights of secured creditors. This argument is totally misconceived as the cane grower has a statutory right to receive payment for the sugarcane delivered. The Act and the Rules create a regulatory framework which recognizes the necessity of the sugar mill to receive sugarcane during a crushing season in order to meet the demand for sugar being an essential commodity. The Act and the Rules ensure that the sugar mill receives the desired quantity of sugarcane from the cane grower at a given time. The Act also requires that the cane grower be paid the minimum price for the sugarcane supplied. Hence the rights and obligations with reference to the supply of sugarcane are of the sugar mill and cane grower. As part of the scheme of the regulatory framework, keeping in mind the relationship of the sugar mill and cane grower, a regulator oversees the entire process of supply and delivery and a mechanism is created under the Act to recover amounts due to the cane grower through the Cane Commissioner. The powers of the Cane Commissioner for the purposes of recovery are the same as a Collector under the West Pakistan Land Revenue Act, 1967 ("LRA") as provided in section 6 of the Act. This power as and when exercised by the Cane Commissioner is not to recover government dues but to recover amounts due to the cane grower. The regulatory framework puts the Cane Commissioner in a pivotal position to regulate the supply and delivery of sugarcane as well as to ensure that the cane grower is paid. Hence the Cane Commissioner while exercising power under Section 6 of the Act can recover amounts due to the cane grower and this power does not translate into recovering government dues. The Cane Commissioner acts as the regulatory authority who is empowered under the law to protect the rights of the cane grower in the same way as he is empowered under the Act to protect the rights of the sugar mills. Therefore the cane growers right to recover amounts due to them through the Cane Commissioner does not make their debt a government due.

### **The Law and Regulatory Framework**

17. The Act is a special law specifically designed to regulate the purchase and delivery of sugarcane. The Rules were framed under Section 23 of the Act and must be read as an integral part of the Act itself. In this regard the Supreme Court of India held in the case titled National Insurance Company Limited v. Swaran Singh and others [(2004) 3 Supreme Court Cases 297)] that rules validly made under a statute become part of the statute and such rules are to be read as part of the main enactment. The Rules are statutory rules made in accordance with the powers conferred under the Act and have the force of law. Since the parties before the Court seek protection and enforcement of their rights, that is the Banks seek protection of their rights as secured creditors and the

cane growers seek protection of their statutory rights to receive payment, the law, its purpose and the regulatory framework must be considered in order to appreciate the rights and the remedies available to the parties.

18. Sugarcane is an important cash crop and food crop being a vital source of income and employment for the farming community of Pakistan. Sugarcane contribution in the agriculture sector is 3.4% and to the Gross Domestic Product ("GDP") is 0.7%. Furthermore Pakistan occupies an important position globally in sugarcane producing countries, ranking within the top five producing countries. Sugar is termed as an essential commodity under the Essential Commodities Act, 1957 ("1957 Act") meaning thereby that it is a regulated commodity in terms of price, trade and commerce and falls at Serial No.xxvii of the Schedule to the 1957 Act. Hence the Act is a special law which regulates the supply and purchase of sugarcane in order to meet the demand for sugar. The Act regulates the supply of sugarcane to sugar mills such that a specific quantity of sugarcane is grown in one crushing season by the cane growers and utilized by the sugar mills. This ensures that the desired production of sugar is achieved. The extent of regulating production of sugarcane is evident from Section 18 of the Act wherein the sugar mill can distribute approved seeds in order to control the quality of sugarcane. The preamble of the Act clearly sets out the purpose of the Act as regulating the supply of sugarcane intended for use in such factories and the price at which it may be purchased and for such other matters as may be incidental thereto. The lawmaker in its wisdom deemed it necessary to ensure that sugarcane is purchased during the given dates in the required quantity as agreed between the parties. Purchase of sugarcane is not a one sided obligation where the cane grower is compelled to deliver the sugarcane and the sugar mill is not compelled to make payment. The Act and the Rules recognize that the sugarcane must be purchased by the sugar mill at the notified price. The word 'purchase' is all encompassing, including both delivery and payment of price as its necessary ingredients. Without payment of the price the 'purchase' remains incomplete. Undoubtedly the purpose of the Act and the Rules will be frustrated if the price of the sugarcane is not paid to the cane growers within the contemplated time, as the law clearly envisions payment of the sugarcane being an integral part of the purchase of sugarcane by the sugar mill. Even otherwise it is noted that there can be no sale or purchase of sugarcane without payment of the price. To argue that the law focuses and ensures only delivery in favour of the sugar mill suggest that an undue advantage is given to the sugar mill to receive the sugarcane without any commitment or obligation to pay for the sugarcane. This cannot be the objective of the law because the Act regulates the entire business of the cane grower right from selection of seeds up to the delivery of the sugarcane. The cane grower is bound under the statute to deliver the sugarcane to the designated sugar mill. The objective behind regulating the business of the cane grower is that the cane grower delivers the required quantity of sugarcane for the price fixed by the government under Section 16 of the Act. This ensures that the land used for cane growing is used efficiently to match the demand for sugarcane to a given mill. It also ensures optimum and efficient use of milling capacity. The regulatory framework aims to provide certainty to the cane grower and the mill that sugarcane will be supplied and purchased. Hence the Act and the Rules when read together create a regulatory system within which the supply and payment of sugarcane are supervised and controlled by the Cane Commissioner. Consequently it goes without

saying that the purpose of the Act and the Rules is to ensure that the cane grower is made payment for the sugarcane delivered.

19. For ease of reference Sections 13 and 16 of the Act and Rule 14 of the Rules being the relevant provisions are reproduced here under:

**Section 13 Purchase of Cane in a Reserved Area**

- (1) A cane grower or a Cane Growers' Co-operative society in a reserved area may, if required to do so by the Cane Commissioner shall, offer in the form and by the date prescribed, and supply to the occupier of the Factory, for which the area is reserved, such quantity of cane grown by the cane grower or by the members of such Cane Growers' Co-operative Society, as the case may be as is generally prescribed for, or specially directed by the Cane Commissioner, for such cane grower or Cane Growers' co-operative Society.
- (2) The occupier of a factory, for which an area is reserved, shall enter into an agreement in such form by such date and on such terms and conditions as may be prescribed to purchase the cane offered in accordance with subsection (1), provided that he shall not purchase or enter into an agreement to purchase cane from a person who is a member of a Cane Growers' Co-operative Society.
- (3) Unless the Provincial Government otherwise directs, cane grown in a reserved area shall not be purchased by a purchasing agent or by any person other than the occupier of the Factory for which such area has been reserved except by any other grower for the bona fide purpose of seed.
- (4) Cane grown in a reserved area shall not be sold by any person other than a cane grower or a Growers' Co-operative Society, provided that a cane grower or a Cane Growers' Co-operative Society may deliver cane intended for a factory through another cane grower of that area, or through a carrier.
- (5) During the crushing season, the Provincial Government may, if it is satisfied that there is likely to be in the area reserved for a Factory any quantity of cane available for sale to the occupier of the Factory in excess of the quantity for which he is required to enter into an agreement, direct that cane shall not be purchased outside the reserved area until the occupier of the Factory enters into agreements to purchase all the cane offered to him in the reserved area.

**Section 16 Power of Provincial Government to fix minimum price**

- (i) The Provincial Government, after consultation with the Board, may by notification, determine in respect of any area the minimum price to be paid by occupiers of Factories or purchasing agents for cane purchased

in that area either generally or related to the sugar contents of the cane or direct that such minimum price shall be calculated in the manner prescribed.

- (ii) The Provincial Government may from time to time vary by notification, the price fixed under subsection (i).
- (iii) The occupier of a Factory or a purchasing agent shall not make any deduction from the amount due for cane sold to him by a cane grower or a Cane Growers' Co-operative Society, except such deductions as may be prescribed or as the Provincial Government may, by notification, from time to time, allow.
- (iv) The Provincial Government may, after consultation with the Board, by notification, direct that in addition to the minimum price to be paid for cane, the occupier of a factory shall pay for special varieties of cane to be specified in the notification and which the cane grower or Cane Growers' Co-operative Society has agreed to supply, such additional price as the Provincial Government may direct.

#### **Rule 14 Payments**

- (1) The occupier or purchasing agent shall provide adequate facilities to the satisfaction of the Cane Commissioner for the payment of the price of cane.
- (2) The occupier or purchasing agent shall make all payments for cane at the purchasing centre within fifteen days of the delivery of cane:

Provided further that when a purchasing centre is closed, all payments must be made at the centre within a week of the closing of the centre and if any growers do not appear to receive payments within a week of the closing of the centre, payments to them should thereafter be made at the factory within 24 hours of demand.

- (3) Payments shall be made on the basis of the recorded weight of the cane at the purchasing centre.
- (4) Payments for cane purchased for a factory shall not be made to a representative of the growers (or to a representative of the person representing himself to be such grower) unless he is duly authorised by him in writing to received such payments:

Provided that no person who has purchased the cane from the grower, or who is employed by an occupier or a purchasing agent and no person who has lent money to the grower and no agent of such person, shall take such payments.

- (5) An occupier and purchasing agent shall be liable for all payments due for cane supplied to him or on his behalf. If a purchasing agent fails to make payment for cane purchased by him for a factory, the occupier of such factory shall be responsible for making such payments:

Provided that notice or complaint of non-payment is given, or made in writing, to the occupier of the factory concerned, within three months of the date on which the purchasing centre at which the cane was supplied is closed.

- (6) Except as provided in sub-rules (7), (8), (9) and (10) no deduction shall be made by way of fine or otherwise from the price of the cane purchased which would reduce such price to a figure below that calculated at the prescribed minimum rate. Recoveries of the dues of a Cane Growers' Co-operative Society may be made by deduction from the price payment for cane.

- (7) When transport is provided by the occupier of the factory he may deduct the cost of transport according to the rate fixed by the Cane Commissioner.

(i) Deduction may be made, if cane is definitely below the average of standard cane for the area on account of delay in transport or natural causes, e.g., serious water logging, intensive insect attack, disease, or sever frost. The Cane Commissioner will issue general instructions for the guidance of the occupiers in regard to the extent to which such deductions are to be made and in cases of dispute the decision of the Cane Commissioner will be final.

- (8) The Provincial Government, if satisfied that in any local area substantial quantity of cane will remain standing and unsold on the 1st June, and is not likely to be purchased at the prescribed minimum price, may by notification in the Gazette direct that in such area such deduction as may be specified in the Notification may be made from the price of the cane purchased after that date.

- (9) If any loan has been advanced by an occupier or a purchasing agent for meeting the expenses of cultivation to the persons from whom cane has been purchased, the amount of such loan, together with simple interest thereon at a rate not exceeding 10 percent per annum for the period the loan has been outstanding may, subject to the terms of the agreements between the lender and the borrower, be deducted from the amount paid for the cane:

Provided that the amount of the loan is disproportionate to the area to be sown, or the assistance necessary to sow it, or the value of the cane to be delivered, and that no deduction is made in respect of a loan given more than three years previous to the date of the purchasing of cane.

Explanation - A loan for the purpose of this rule shall mean only an advance made in pursuance of an agreement to sow a definite area of sugarcane, and for enabling or assisting such area to be sown, or in pursuance of an agreement to deliver a certain amount of cane. The Cane Commissioner will decide on application from the occupier or purchasing agent concerned, whether a loan is proportionate to the area to be sown, or the assistance necessary to sow it, or the value of the cane to be delivered.

- (10) The occupier or purchasing agent shall be liable to pay interest at the rate of eleven percent per annum or unpaid balance of payment for cane, from the date of delivery of the cane, in case where such payment is not cleared within fifteen days of its delivery.

20. In terms of Section 13 of the Act, the cane grower offers the sugar mill such quantity of sugarcane, as is required by it. The sugar mill can accept the offer and purchase the sugarcane at the prescribed price as per the fixed terms and conditions provided by the Cane Commissioner. Rule 9 of the Rules provides for the general terms and conditions which govern the sale transaction. The offer by the cane grower is made in terms of Appendix II Form 6 of the Rules. The acceptance is made as per Appendix II Form 7 and Form 8. Rule 9(4) requires that purchase is made after issuance of a requisition slip. Therefore the basic terms, quantity and price are fixed by the Cane Commissioner and Government of Punjab respectively and the details being the time and date of delivery is agreed between the parties as approved by the Cane Commissioner. Even otherwise Section 13 read with Rules 10 and 14 and Forms 7 and 8 clearly establish that the sugarcane has to be purchased by the sugar mill and that the price of sugarcane has to be paid within fifteen days of the delivery of the cane. The word 'purchase' as per Black's Law Dictionary Tenth Edition, means the act or an instance of buying meaning to acquire something by paying for it. Furthermore sections 13 and 14 of the Act controls the terms and conditions of purchase of sugarcane from a reserved area or assigned area. Purchase of the sugarcane involves a commitment on the delivery of cane and payment of the price, as fixed by the Government of Punjab. The sugar mill has to pay the price fixed by the Government and the cane grower must supply the sugarcane as per the agreed quantity. Hence the statute creates a clear obligation on the sugar mill to purchase the sugarcane delivered to it, meaning thereby to pay for the cane delivered to it. Rule 14(2) grants a fifteen day period within which the payment must be made. Consequently there is a clear statutory obligation on the sugar mill to pay the price of the sugarcane received by it within fifteen days of its delivery.

21. Section 16 of the Act grants the Provincial Government power to fix the minimum price at which sugarcane is purchased and ensures that the cane grower receives the minimum price. Section 16(iii) of the Act prohibits the sugar mill to deduct any amounts from the price fixed by the Government of Punjab meaning thereby that the cane grower is entitled to the price of the cane without any set off or deductions as further elaborated upon in Rule 14(6). The intent of Section 16 is to ensure that the cane grower is paid a fixed price for the sugarcane delivered to the sugar mill. It also ensures that the sugar mill is cognizant of its obligations to pay the price for the

sugarcane purchased and does not leave anything to be negotiated between the parties. Since the lawmaker deemed it necessary to regulate the purchase of sugarcane through the Act, they intentionally gave the power to fix the price of the sugarcane to the Government so that the cane grower is ensured payment of the price of the sugarcane delivered. Section 16 of the Act effectively protects the cane grower from any unfair dealing by the sugar mill as it does not allow the mill to negotiate the price of the sugarcane.

22. Rule 14 provides for all matters relevant for the purposes of payment to the cane grower. Rule 14(1) and (2) requires that the Cane Commissioner satisfy himself that payment can be made and that payment is made within fifteen days of delivery of cane. In the event of delay or non-compliance of Rule 14(2), the sugar mill is liable to pay interest at the rate of 11% per annum on unpaid balance of cane from the date of delivery till payment is cleared. Rule 14(4) and (5) ensure that payment for cane purchased by a sugar mill is made to the grower even if through a representative or an occupier of the sugar mill. Rule 14(6) emphasizes that no deduction can be made from the price of the cane purchased meaning thereby that sugar mill cannot settle any debt or payment due from the grower against the price of the sugarcane supplied. The only exception provided is in Rule 14(9), that too as per the prescribed conditions. Hence the objective of Rule 14 is to ensure that payment guaranteed under Section 16 of the Act is made to the cane grower for the sugarcane supplied to the sugar mill. It is noted that Rule 14 is in furtherance of the purpose of the Act which regulates the supply of sugarcane and the price at which it can be purchased.

23. Furthermore as per the arguments of Mrs. Samia Khalid, Additional Advocate General the prevailing practice is that a sugar mill issues a Cane Purchase Receipt ("CPR") to the cane grower providing the specific date, time and weight of the cane supplied along with the total amount due to the cane grower for the sugarcane supplied. Copies of the CPRs were placed on file. The CPR is an acknowledgement by the sugar mill that it has received sugarcane from the mentioned cane grower and is liable to pay for the delivery of the sugarcane. The issuance of the CPR by the sugar mill signifies that the cane grower has fulfilled its obligation under the Act and the sugar mill is obligated to pay the price as given in the CPR. Therefore the right of the cane grower to receive the price of the sugarcane delivered is a statutory right which has been recognized and acknowledged by the sugar mill when issuing a CPR.

24. Having examined the Act, the Rules and the regulatory framework, it is important to deliberate on the relevance of the purpose of the law and the context in which it must be examined. Time and again, in different cases, cane growers have approached the Court seeking payment from sugar mills to whom sugarcane has been delivered. The cane growers have argued on the strength of the purpose of the Act and the powers given to the Cane Commissioner under the Act, which is to regulate the delivery of sugarcane and ensure payment to the cane grower. This Court has seen, more often than not, cane growers in Court seeking a direction that the Cane Commissioner do his job and recover payments for the cane grower. The powers and duties of the Cane Commissioner are repeatedly invoked to recover amounts due to the cane grower in furtherance of the objectives of the Act and the Rules. The Courts have considered the regulatory framework under the Act in order to balance the rights of the sugar mills

and the cane growers so that one does not take advantage of its position over the other. In the dispute before the Court the issue is not simplicitor recovery for amounts due to the cane growers from the Sugar Mills. The rights of the Banks as secured creditors must be seen in their own independent context in order to conclude who gets priority with reference to the value of the bags of sugar.

### **Role of the Cane Commissioner**

25. The role of the Cane Commissioner is in dispute, hence it must be examined so as to determine whether the Cane Commissioner is the competent authority to recover the cane growers' dues under the Act. The Cane Commissioner is appointed under Section 6 of the Act and as per section 6(2) the Cane Commissioner is deemed to have powers of a Collector/DCO under the LRA and the Punjab Tenancy Act, 1887. The Cane Commissioner is the regulator under the Act who has been authorized to ensure that a sugar mill having declared its estimated quantity of cane required will start crushing during the crushing season. As per the Act the Cane Commissioner shall ensure that the sugar mill is supplied with sugarcane from the reserved area declared for this purpose. The Cane Commissioner has to notify the quantity of sugarcane required by a sugar mill during a crushing season one month before the crushing starts. Estimated quantity required by the sugar mill is declared and a commitment is taken from the cane growers in the area for the supply of sugarcane to a particular sugar mill. Section 13 prescribes for the procedure to be undertaken for the purchase of sugarcane in a reserved area wherein the cane grower has to supply sugarcane to a sugar mill. The Cane Commissioner can also by an order in writing prohibit the cultivation of any variety of sugarcane declared by the Government of Punjab to be unsuitable for distribution. It is noted that the cane grower can only use seeds of the variety permitted by the Government of Punjab. Section 21 provides for the penalties in the event that any person contravenes any provision of the Act or the Rules made thereunder.

26. The relevant power in these cases with reference to the Cane Commissioner is under section 6(2) of the Act which gives the powers of the Collector/DCO as under the LRA to the Cane Commissioner. This Court has already held in judgment titled Haji Bashir Ahmad and others v. Cane Commissioner (PLD 2013 Lahore 81) that the Cane Commissioner can collect amounts due as arrears of land revenue for the benefit of the cane grower. The counsel for the Banks argued that the Cane Commissioner has no power to recover dues of the cane growers and that neither the Act nor Rules authorize the Cane Commissioner to recover the price of the sugarcane from the sugar mills. Furthermore that even if the Cane Commissioner can recover for the benefit of the cane growers, it cannot be given priority over the dues of the secured creditors. The basic argument is that the Cane Commissioner cannot declare the dues of the cane growers to be arrears of land revenue. Therefore he cannot recover the dues of the cane growers in terms of section 6(2) of the Act. The counsel for the Banks argued that although the Cane Commissioner has been given powers of the Collector under section 6(2) of the Act, there is no enabling provision in the Act which provides that sums due to the cane growers are recoverable as arrears of land revenue. In this regard section 6(2) of the Act clearly provides that the Cane Commissioner has the powers of a Collector/DCO under the LRA and Punjab Tenancy Act, 1887. Section 80 of the LRA provides for the procedure to be adopted by the Collector in order to recover arrears of

land revenue. It was argued before the Court that the powers under Section 80 of the LRA are for the purposes of recovering arrears of land revenue meaning thereby that the powers can only be exercised to recover arrears of land revenue. Section 11 of the Act provides for surveys of reserved areas and authorizes the government to recover the cost of the survey from the sugar mill as arrears of land revenue. In view of section 11 of the Act it was argued that the powers under section 6(2) of the Act can only be read in conjunction with the requirement of section 11 of the Act. I am of the opinion that the arguments are misconceived given that the basic role of the Cane Commissioner under the Act is regulatory, with the objective to ensure that sugarcane is delivered by the cane grower within time and that payment is made to the cane grower within fifteen days of delivery. Under the Act the Cane Commissioner is obligated to ensure that the purchase of sugarcane is completed within the crushing season. In terms of the Rules the Cane Commissioner regulates the entire process from cultivation to sale, including issuance of licenses for purchasing agents, weightment and payments made to the cane grower. In the event of a dispute the matter is referred to the Cane Commissioner as per Rule 17 who then settle the claims of the cane growers. In the event of non-compliance with any of the provisions of the Rules the Cane Commissioner can impose penalties under Rule 18. Hence the role of the Cane Commissioner as the regulator requires that he has powers to ensure that the mandate of the Act and the Rules is fulfilled such that the cane growers supply sugarcane and the sugar mill pays the price of the sugarcane.

27. The Act mandates the Cane Commissioner to recover the price of the sugarcane if the sugar mill does not pay the same within fifteen days' time by exercising powers under section 6(2) of the Act. In order to effectuate the purpose of the Act the objective of section 6(2) cannot be limited to be construed as collection of arrears of land revenue that too when section 11(4) of the Act, itself stipulates that the cost of the survey can be recovered as arrears of land revenue. The purpose of section 6(2) of the Act is to empower the Cane Commissioner to recover the price of the sugarcane as mandated under the Act. Since the Act is a special law, a special mechanism has been created under the Act to enable the cane grower to recover its due. The lawmaker did not want the cane grower to pursue its dues through recovery suits and instead designed a mechanism where the role of the Cane Commissioner is such that it can exercise all the powers of the Collector in order to recover the cane growers' dues. Accordingly the Cane Commissioner is the competent authority and forum under the Act for the recovery of all dues of the cane grower. So for example, the Cane Commissioner by virtue of section 6(2) of the Act can adopt the procedure and process given under Section 80 of the LRA to recover the dues of the cane grower. Interestingly the enabling provisions referred to by the counsel for the Banks, such as section 54(A) of the Electricity Act, 1910, section 55 of Provincial Employees' Social Security Ordinance, 1965, section 41 of Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 and section 29-A of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 do not give the powers of the Collector under the LRA to some authority for recovery of arrears of land revenue. Instead the laws simply by reference provide that amounts due are to be recovered as arrears of land revenue. By contrast section 6(2) of the Act specifically gives the powers of the Collector as prescribed under the LRA to the Cane Commissioner so as to enable him to fulfill his obligation with respect to recovering the dues of the cane growers. In this

regard section 11(4) of the Act by reference requires recovery of dues for survey of reserved area as arrears of land revenue. Both the Sections when read together indicate the clear intent of the legislature to empower the Cane Commissioner in order to fulfill the mandate of the Act. As a result, the Cane Commissioner can adopt the powers and procedure provided under the LRA to recover the price of the sugarcane for the cane grower. If the Cane Commissioner did not have the power to recover the dues of the cane grower, the purpose of the Act would be defeated and would in fact give an unfair advantage to the sugar mill by compelling the cane grower to give delivery of sugarcane without any payment. This Court has on numerous occasions recognizes the critical role of the Cane Commissioner and upheld the powers of the Cane Commissioner with respect to recovery of amounts due to the cane growers. Reliance is placed on the judgments of this Court dated 9.2.2011 passed in W.P. No.21226/2010, 26.4.2010 in W.P. No.5664/2010, 20.5.2010 in W.P. No.8821/2010, 19.7.2012 in W.P. No.10238/2012, 29.5.2015 in W.P. No.16190/2015 and PLJ 2013 Lahore 9 (supra). Hence the Cane Commissioner is the competent authority through which the cane grower can recover its dues and the Cane Commissioner can exercise all the powers of the Collector under the LRA to recover these amounts.

### **The Dispute**

28. The dispute as argued by the learned counsel is one of competing rights that is whether the Banks get priority over the bags of sugar because of the pledge in their favour or whether the cane growers get priority to receive payments due to them for the sugarcane delivered on account of their statutory right. The dispute arose because the cane growers were not paid for sugarcane purchased by the Sugar Mills since 2014 and 2016. Ultimately the Cane Commissioner took possession of the pledged bags of sugar to auction the same in order to settle outstanding dues of the cane growers. In W.P. No.4562/2016 the bags of sugar of Brother Sugar Mills were auctioned under the supervision of the Court vide order dated 12.7.2016 as there were allegations that the pledged stocks were being illegally removed by the mill owners. An amount of Rs.669,215,411/- is lying with the Deputy Registrar (Judicial) of this Court against which all Petitioners are claimants. With respect to the petitions of the Banks, the position of the Banks vis- -vis the pledge stock is as follows:

<b>W.P. No.</b>	<b>Bank</b>	<b>Sugar Mill</b>	<b>Date of Pledge</b>	<b>Status</b>
4562/16	Al-Baraka Bank (Pakistan)	Brother Sugar Mills	18-2-20-14	Suit Pending
4650/16	JS Bank Limited	Brother Sugar Mills	1-12-2014	Suit Pending
10377/16	Bank of Khyber	Brother Sugar Mills		Suit decreed
19515/16	Summit Bank Limited	Brother Sugar Mills	8-12-2014	No suit filed

25932.16	National Bank of Pakistan Limited	Brother Sugar Mills	2-7-2014	Information not provided
64254/17	MCB Bank Limited	Darya Khan Sugar Mills	11-11-2016	Information not provided
64911/17	MCB Bank Limited	Pattoki Sugar Mills	30.1.2017 24.3.2017	Information not provided
63883/17	United Bank Limited	Pattoki Sugar Mill	21-6-2016	No default
67851/17	Meezan Bank Limited	Darya Khan Sugar Mill	6.3.2017	No default

### **Opinion of the Court**

29. The rights of the Banks as secured creditors are long standing and established starting from Federation of Pakistan v. Pioneer Bank Limited and others (PLD 1958 Dacca 535) where the court held that the attachment or sale to satisfy a government debt would not affect a mortgage which was created prior to the attachment or sale up to 2015 SCMR 1376 (supra) where the court held that the government will not get any preferential right over the right of the secured creditors, where a mortgage is created prior to government due. The rights of secured creditors are protected when the property is sold by any creditor or when the property is sold in liquidation proceedings as held in 1992 SCMR 1731 (supra). In Orix Leasing Pakistan Limited v. Sunshine Cloth Limited (2001 PTD 3146) it was held that no one could lay claim on the mortgaged property or on the proceeds realized from the sale thereof. The rights of secured creditors can only be curtailed and priority or preference can only be given when another secured creditor has a right prior in time to a secured creditor. Reliance is placed on 1994 SCMR 2248 (supra). Therefore 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 unsecured creditors.

30. Indian Courts have also examined the cane growers right to recover the price of sugarcane. The first judgment cited before the Court was State of Bihar v. Bank of Bihar Ltd. (AIR 1963 Patna 344) in which the court held that the acts of the rationing officer/cane commissioner of seizing the pledged sugar was lawful. This judgment was subsequently overruled in AIR 1971 SC 1210 (supra). The facts of this case are the Sugar Mill obtained a cash credit facility by pledging sugar with the bank. The bags of sugar were kept in the godowns of the banks under the control of the bank. The rationing officer forcibly seized the sugar bags claiming that he would recover all dues against the sugar bags and that the cane growers had priority over the banks. The Supreme Court of India held that the rationing officer did not have any right of priority over the secured creditors as an unsecured creditor did not have a higher right than that of the pledger. In this case the cane growers' debt was unsecured, hence he did not have any priority. In another case State of M.P v. Jaora Sugar Mills Ltd and others ((1997) 9 Supreme Court Cases 207) in a dispute over price and interest on delayed payment the

Supreme Court of India held that the cane commissioner has the power to compel cane growers to supply sugarcane to the factory unit and has the incidental power to ensure payment to the cane grower. That the price fixed or agreed is a statutory price and bears the stamp of a statutory list charge on the sugar and assets of the factory over any other liability. In *Rashtriya Kisan Mazdoor v. State of U.P. and another* (2017) dated 9.3.2017 in a public interest case the court of Allahabad required that the price of the sugarcane be paid together with interest. The court held that the cane growers had a statutory entitlement to receive payment as of right and interest in the event of delayed payment. The court also held that the cane commissioner was duty bound to recover amounts due to the cane growers. In *Agauta Sugar and Chemicals v. State of U.P and others* (1997) 10 Supreme Court Cases 99, the appeal of the sugar mill was dismissed and the cane commissioner was directed to recover the price of the sugarcane by selling the sugar stock in hand, which would be sufficient to meet the price of the sugarcane and the interest on delayed payment. Hence most of the cases recognize that the cane grower must be paid the price of the sugarcane along with interest for delayed payment.

31. The aforementioned cases clarify 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. This right of the cane grower is on account of the fact that he is the owner of the sugarcane delivered to the sugar mills. The cane grower sells sugarcane to the sugar mill as owner and the Act and the Rules envision a framework which protects the cane grower ownership rights as well as ensures that the right is enforceable. Hence in order to resolve the dispute this Court proceeds to examine the scheme of the Act and the Rules in the context of the cane grower's right as owner of the sugarcane.

32. As already stated the Act sets out to regulate the supply of sugarcane to sugar mills and the price at which the sugarcane shall be purchased. As per the preamble of the Act the mandate of the Act is to ensure that sugarcane is supplied to the sugar mills and that the cane growers are paid the price of that sugarcane. The purchase of sugarcane is regulated under Section 13 of the Act which clearly requires sugar mills to purchase from the cane grower a specified quantity of sugarcane and further requires the cane grower to supply sugarcane to a specified sugar mill within a specified period. Section 16 of the Act regulates the price of the sugarcane such that the provincial government sets the minimum price and the sugar mill is required to pay the fixed price to the cane grower without any deduction. Rule 14(2) of the Rules requires the sugar mill to make all payments within fifteen days of the delivery of the cane and also provides that the sugar mills will be liable for all payments without any deductions. Rule 14(2) is a mandatory provision which imposes an obligation on the sugar mills to make payment for the sugarcane in fifteen days' time. Effectively the cane grower has the right to receive the price from the sugar mill within fifteen days' time. This right is a statutory right which ensures that the owner of the sugarcane is paid the price of the sugarcane delivered to the sugar mill. In the event that the payment is not made the sugar mill, in terms of Rule 14(10) is liable to pay interest at the rate of 11% per annum from the date of delivery of the cane till the date when the payment is made. Therefore the Act and the Rules when read together make it evident that the legislature in its wisdom, deemed it necessary to balance the rights of the cane grower and the sugar mill so that

the supply of sugarcane is not delayed and the price of the delivered sugarcane is made on time. The special regulatory scheme ensures delivery and payment of sugarcane which is an essential crop and does not aim to achieve unjust enrichment to the benefit of the sugar mill.

33. Title is a significant element in a sale transaction as it impacts upon the rights, remedies and obligations of the seller and the buyer. Section 19 of the Sales of Goods Act, 1930 ("Sales of Goods Act") provides that where there is a contract for the sale of specific and ascertained goods the property in them is transferred to the buyer at the time when the parties to the contract intend it to be transferred. As per the Section for the purposes of ascertaining the intention of the parties the terms of the contract, the conduct of the parties and the circumstances of the case will be considered. Where the intent is not specified it will be for the court to ascertain the intent of the parties. With reference to transfer of title of the goods, Sections 20 to 24 of the Sales of Goods Act provides for the different rules to ascertain the intention of the parties, as to the time at which the property in the goods is to pass to the buyers. Section 20 provides 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 where is a contract for sale of specified goods, and the seller is bound to do something in order to put the goods in a deliverable state the property in the goods does not pass until the seller has done what he is required to do. Section 22 provides where there is a contract for sale for specified goods and the seller is bound to weigh, measure or test the goods, the property in the goods will not pass until the seller has done what he is required to do. Section 23 pertains to unascertained or future goods. The property in the goods will pass when the goods are appropriated by the seller or by the buyer. Finally Section 24 provides that where the 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. Sections 20 to 24 lay down the circumstances on the basis of which the intent of the parties can be given effect to with respect to the transfer of the title in the goods. Consequently these sections when read together, make it clear that delivery of goods and passing of title are two separate events and it is not necessary that title is transferred when delivery is made to the buyer. Reliance is placed on *Messrs Alfarooq Shipping Co. Ltd. v. Messrs Vasa Shipping Co. Ltd. and 4 others* (1980 CLC 1228), *Pakistan Mercantile Corporation Ltd. v. Madan Mohan Oil Mills* (1966 Dacca 181), *Commissioner of Income Tax v. H.K.Patil* (1994 PTD 330) and *Ghulam Mustafa v. Officer on Special Duty, Federal Land Commission and another* (1984 CLC 824). It is also important to note that as per the Sale of Goods Act payment and delivery are concurrent in terms of section 32 whereby unless otherwise agreed, the buyer must pay the seller when possession of the goods is taken. Hence the general rule is unless otherwise intended, payment must be made when the goods are delivered.

34. The crucial test in these cases is therefore the intent of the law and the intent of the parties with reference to transfer of title when the goods are delivered to the buyer. So far as the intent of the parties is concerned that is often documented in the form of an agreement between the parties. In the cases before the Court, the intent of the parties is undisputed and evident from the CPRs that are issued by the Sugar Mill to the cane growers. The CPRs specify the quantity and the weight of the sugarcane delivered and the price which is to be paid to the cane grower. The CPRs evidence that the sugarcane

has been received by the Sugar Mill and that the amount specified therein is due to the cane grower for the sugarcane delivered. Hence the CPR acknowledges the obligation of the Sugar Mill to pay the price of the sugarcane to the cane grower. Since Rule 14(2) of the Rules requires payment to be made in fifteen days, the issuance of the CPR is an acknowledgement of the obligation to pay the cane grower in fifteen days from the delivery.

35. With respect to the intent of the law that must be construed in the context of the purpose of the Act and the rights and obligations created under the Act. Essentially the construction of the intent of the law must be such that it gives effect to the meaning of the law. Justice Antonin Scalia of the US Supreme Court in *Reading Law: The Interpretation of Legal Texts* by Antonin Scalia and Bryan A. Garner (2012) expounded that the words of the law are given meaning to by their context and the context includes the purpose of the law. First, the purpose must be derived from the text, not from extrinsic sources such as legislative history or an assumption about the legal drafter's desire. Second, the purpose must be defined precisely and not in a fashion that smuggles in the answer to the question before the decision maker. Third, the purpose is to be described as concretely as possible not abstractly. More importantly the authors explain that purpose sheds light on deciding which of the various textually permissible meanings should be adopted. Similarly in the case of *National Workers' Union v. P.R. Ramakrishnan* [(1983) 1 SCC 228], the Supreme Court of India held that the law must be construed in accordance with the needs of the changing society, in the following words:

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.

The principles of interpreting an ongoing statute have been very succinctly set out by the leading jurist Francis Bennion in his commentaries titled *Statutory Interpretation*, 2nd Edition, page-617, as follows:

It is presumed Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wordings to allow for changes since the Act was initially framed. While it remains law, it has to be treated as always speaking. This means that in its application on any day, the language of the Act though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as a current law.

In construing on ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect

to the original intention. Accordingly, the interpreter is to make awareness for any relevant changes that have occurred since the Act's passing, in law, in social conditions, technology, the meaning of words and other matters. That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will foresee the future and allow for it in the wording.

An 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. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials.

The intent of the Act and the Rules in specifying the time for payment is to ensure that the cane grower is paid and that the price owed to the cane grower is not only secured but also remains enforceable under the Act. This is because the supply of sugarcane to the sugar mill is not an ordinary sale of goods. The legislature considered it to be a special transaction which required regulation and control and also required protection so far as the rights of the cane growers are concerned. The Act is designed to protect the suppliers and buyers of sugarcane which is a fast moving commodity due to its essential and perishable nature. The mandatory period for making payment secures the price of the sugarcane for the benefit of the cane grower while giving the sugar mill the benefit of a fifteen day credit. Doing business on credit is an acceptable mode, however in the case of the sale of sugarcane the Act, while regulating and controlling the sale transaction cannot be interpreted so as to leave the cane grower helpless at the hands of the sugar mill. In such eventuality the entire scheme of the law is defeated if the rights of the cane growers are not protected such that their right to receive payment is not enforceable. The purpose of requiring the cane grower to deliver on credit, is to facilitate the buyer sugar mill, so that it can use the goods. This does not suggest that the Act leaves the cane grower without any remedy to recover its dues. Therefore to the mind of the Court, by specifying the time within which payment must be made the intent of the law is to protect the cane grower so as to secure his payment and to ensure that the cane grower's right to recover his dues from the sugar mill will not be subservient to any other right.

36. Sugarcane is a regulated crop from its cultivation to the sale made to the sugar mill and the statutory regulations which cast obligations on the cane grower and the sugar mill are to be interpreted in order to advance the purpose of the statute. The purpose of the statute as already stated is to ensure that sugarcane is supplied/delivered to the sugar mill within a specified time in the given quantity required and that the sugar mill pays the cane grower for the sugarcane delivered. Hence the terms and conditions are all regulated by the law. Despite the same the nature of the trade is such and the practice over time has shown that the cane grower delivers the sugar cane on time and yet the sugar mill delays payment considerably given the perishable nature of the goods once the sugarcane is delivered to the sugar mill, its crushing is almost

immediate for the production of sugar meaning thereby that the buyer will immediately put the sugarcane to use without payment to the cane grower. Hence while recognizing the ownership rights of the cane growers the Act recognizes that a debt is created with respect to the price of the sugarcane in favour of the cane grower which must be paid within fifteen days. Consequently by construing this requirement to be a statutory retention of title clause in favour of the cane grower the special purpose of the Act is achieved. Sections 13, 16 of the Act and Rule 14 of the Rules gives special treatment to the purchase transaction, such that the unpaid cane grower does not transfer title in the sugarcane supplied until payment is made in order to ensure compliance of the statutory condition to make payment in fifteen days.

37. 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. Essentially an owner having a right to payment, loses control over the goods yet retains title so as to ensure that in case the price is not paid within time, title of the goods will not pass to the buyer. Hence the goods do not become the property of the buyer nor does it become part of the assets of the buyer. In this way the right of the unpaid seller to recover the price of its goods is secured because the buyer cannot transfer title or security interest over the goods since he does not have title in the goods. In terms of the Nemo Dat Qui Non Habet Rule, (he who hath not cannot give) the law protects the unpaid seller as the buyer cannot give that which he does not have i.e. title in the goods. Retention of title clause is one of legally acceptable modes in which a merchant supplying goods to a retailer or a manufacturer on credit can secure his payment by retaining title to the goods until payment is made.

An RT clause is virtually the only way a trade creditor. For example, a merchant supplying goods to a retailer or a manufacturer on credit can obtain security for the credit she extends to her customer. These clauses are therefore significant to business people, lawyers, academics and others interested in commercial sales transaction.

RT clauses are also of considerable importance in a broader social and economic context. As a recent report on insolvency law in England observed, "credit is the lifeblood of the modern industrialized economy." A significant proportion of business credit is supplied by trade creditors. It is therefore vital to the health and free-flow of this "lifeblood" that sellers wishing to extend credit to merchant buyers be able to obtain security. Where a trade creditor requiring security has little option but to rely on an RT clause, as is currently the case in England, the effectiveness of such a clause becomes extremely important.

The significance of retention of title clauses is the priority it is given over all other creditors, including secured creditors because amounts are recovered as owners and not as creditors. Furthermore the retention of title ensures that payment is made to the seller even if the goods cannot be recovered, because the seller is seeking 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 title is retained even though delivery is made which means that the buyer is not the owner of the goods until payment is made.

In its simplest form, an RT clause in a contract for the sale of goods is relatively uncomplicated to create. It merely provides that the seller supplies goods to the buyer on the condition that ownership of the goods (title) will not pass to the buyer until the goods have been paid in full. The reason for including this clause in a sales contract is to assure the seller that payment will ultimately be made. This assurance derives from the fact that an RT clause "allows the owner/supplier of goods to seize the property should the debtor fail in one of his primary obligations, notably, payment of the price". If the seller cannot get her money from the buyer, she can get her goods back.

However, it is not so much the possibility of reclaiming goods supplied that inspires sellers to include RT clauses in their contracts. In general, sellers are probably more interested in payment than the return of their goods. The principal significance of an RT clause from the seller's perspective is the potential priority it may give her vis- -vis other creditors in the event of the buyer's insolvency:

The broad purpose of an agreement that a seller retains title to goods pending payment of the purchase price and other moneys owing to him is to protect the seller from the insolvency of the buyer in circumstances where the price and other moneys remain unpaid. The seller's aim in insisting on a retention of title clause is to prevent the goods and the proceeds of sale of the goods from becoming part of the assets of an insolvent buyer, available to satisfy the claim of the general body of creditors (*supra*).

38. Several jurisdictions such as English, USA, Germany, Australia and Hong Kong recognize retention of title clauses as being a commercially viable way to do business on credit. The courts of these jurisdictions have held it to be a practical tool to secure payment of goods, sold on credit, where the goods are delivered prior to payment being made. In many jurisdictions it is left to the parties to agree contractually on a retention of title clause, however in order to secure the interest of unpaid sellers in a trade where sale on credit is common practice, the courts have stepped in to interpret the statute such that an implied retention of title arrangement is read into the law. The United States Court of Appeals for the Fourth Circuit in *Nickey Gregory Company, LLC; Poppell's Produce Incorporated v. AgriCap, LLC, a/k/a AgriCap Financial Corporation* (No.09-1130) held that the Perishable Agriculture Commodities Act, 1930 ("PACA") was enacted to suppress unfair business practice and was amended in 1984 to provide a unique credit protection to sellers of perishable commodities whereby during the credit period 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 the United States District Court for the Southern District of Texas Houston Division, *Benny's Farm Fresh Products, Inc. v. Vine Ripe Texas, Inc., et al.* (Civil Petition No.H-08-2669), found that the PACA trust includes all commodities received and all products derived from these commodities and any proceeds due from the sale of these commodities. The court held that 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. In this way it is not uncommon even for the lawmaker to recognize the burden on commercial activities where sellers suffer a high risk of not being able to recover amounts due to them. Retention of title is read into the provisions of the law to give effect to the law and secure its purpose. The effect thereof is that the goods are held by the buyer in trust for the benefit of the unpaid seller until full payment is made. The trust includes all commodities, received and accepted but not paid for and will include products derived from the goods. Once the trust comes into being, by operation of law, the suppliers rights are preserved are protected. It is now for the buyer to ensure that payment is made and any omission on the part of the buyer will not deprive the unpaid seller the price of the goods. The goods of the unpaid seller do not come into the ownership of the buyer until 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 or sell them. In the event that the buyer does either of the two the unpaid seller has the right under the retention of title clause to claim the value of the goods as owner of the goods. This is especially so where the nature of the trade is such that the goods are purchased on credit and the seller requires some security before delivering the goods. Sellers of perishable commodities often suffer at the hands of the buyers who immediately utilize the goods but fail to make the payment leaving the unpaid seller with little or no hope of recovering payment. Hence the assumption that parties in a contract of sale for moveable items, agree impliedly on a retention of title structure will help to bridge the gap between the written law and the practical reality.

39. In some cases the original goods to which title belongs to the unpaid seller are no longer identifiable or the goods lose their original identity and the question that arises is the manner in which the retention of title clause is enlarged to cover the resulting products. In the case titled *Aluminum Industries Vaassen B.V. v. Romalpa Aluminum Ltd.* [1976] 1 WLR 676, the retention of title clause was interpreted to cover ownership rights in the new objects. In this case a Dutch exporter sold aluminum foil to an English company under a sales contract containing a retention of title clause. When it appeared that the English company was about to be placed under receivership, the Dutch company filed a petition to recover both the aluminum foil still in the buyer's possession and the proceeds from the sale of the foil. By virtue of the retention of title clause, the Dutch company succeeded on both counts. The court held that in order to give effect to the retention clause it must be construed as conferring on the English company a power to sell unmixed foil and at the same time imposing on them an obligation to account for proceeds of sale in favour of the Dutch company. The court was of the opinion that even though the English company sold the unmixed foil so far as the Dutch company was concerned, the foil was the Dutch company's property which the English company was selling as agents of the Dutch company, to whom they remain accountable. Consequently the court was of the opinion that the Dutch company was entitled to trace the proceeds of sale of the unmixed foil and recover them in priority to secured and unsecured creditors. The court emphasized upon the relationship between the parties which gave rise to an obligation to pay the Dutch company and held that the business purpose of the retention of title clause was to secure the Dutch company against risk of non-payment after they had parted with

possession of the goods and since the price of the goods was verified and certified by the receiver, the value of the foil was ascertained traceable, whether or not those goods retained their identity after delivery. After this landmark judgment the retention of title clause is commonly referred to as the Romalpa clause. Following the Romalpa case a variety of retention of title clauses have developed in international trade. Enforcement of the more complex cases where goods change hands or no longer retain their original composition have led to an expanded understanding of the retention of title clause. The right of the unpaid seller is extended such that retention of title is applicable despite the fact that the goods were no longer identifiable or have lost their original identity to a new item. In the case *Re Weldtech Equipment Ltd.* (1991 BCC 16 (Eng. Ch. 1990)), the enlarged retention of title clause was made applicable to the resale of goods supplied by the company. In the case *Tatung (U.K) Ltd. v. Galex Telesure Ltd.* (1989 BCC 325 (Eng. Q.B. 1988)), the enlarged retention of title clause was made applicable to the sale proceeds even though the goods had lost their identity. In *Associated Alloys Pty Limited v. CAN 001 452 106 PTY Limited (in Liquidation)* ([2000] HCA 25), High Court of Australia held that in the event that the buyer uses the goods of the seller then the buyer shall be liable from the proceeds of the goods to pay the unpaid seller even though the goods are totally converted goods. In all these cases the courts recognized that modern commercial practices required a shift from a basic retention of title clause to a more enlarged or expanded version of the same so as to ensure that the value of the goods are received by the seller.

40. In the cases before the Court the cane growers have delivered the sugarcane to the Brother Sugar Mills but have not received any payment for the sugarcane delivered. In the case of Brothers Sugar Mill delivery was made in 2014 and to date no payment has been made. In the other cases delivery was made in 2016-17 and the cane growers are still waiting for payment. The Sugar Mills on receipt of the sugarcane have utilized it, processed it and have sold bags of sugar. As per the record the Sugar Mills have obtained loans from the Banks to repay the cane growers and as security for these loans they have pledged the sugar bags with the Banks. However despite the same no payment has been made. The Sugar Mills have defaulted in their payment to the cane growers and in some cases with the Banks. 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. Hence for the cane growers the cases before the Court seek enforcement of their right as owners of the sugarcane such that the real owners of the sugarcane assert their right of title against the pledge to the extent that the pledgee cannot take the property of the owners without their consent and knowledge and pledge it with the Banks. The enforcement of this right 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. The right of the Banks to recover as a secured creditor remains intact and is enforceable in accordance with law. However the rights of the cane grower as owner of the sugarcane are enforceable under the Act and the Rules which means its right to recover the price of the sugarcane will trump all other rights.

41. All the Sugar Mills before the Court admit and accept payments to the cane growers which have been verified by the Cane Commissioner under the supervision of the Court. The Sugar Mills have failed to pay the cane growers and despite the same

expect the cane grower to keep delivering sugarcane in each crushing season. The Sugar Mill also entered into a financial relationship with the bank mortgaging its property and pledging all bags of sugar so that in the event of a default all money will go to the bank and the cane grower is left with nothing. The case of Brother Sugar Mills before the Court amplifies the plight of the cane grower. Sugarcane was sold in the year 2014 and since then not a penny has been paid to the cane grower. The sugar mill has closed and the Banks are in the process of recovering all its money from the sugar mill through the sale of all its securities which includes sale of the pledged bags of sugar. With respect to the other banks recovery suits have been filed and decreed in some cases against Brother Sugar Mills. Consequently the Banks will take all the money and the cane grower will have no chance of recovering any amounts from the sugar mill or its owners. It is precisely for this reason that Rule 14(2) of the Rules requires payment to be made within fifteen days' time and these fifteen days are to be construed as being an implied retention of title on the sugarcane which means that title will not pass on to the buyer being a condition attached to the sale of the sugarcane. In fact Rule 14(1) of the Rules facilitates Rule 14(2) as it provides that the occupier or purchasing agent shall provide adequate facilities to the satisfaction of the Cane Commissioner for the payment of the price of cane. In terms of this Rule in order to ensure payment the Cane Commissioner can require that the bags of sugar produced by the cane of a specific cane grower be stored separately so as to identify the specific bags of sugar produced by specific cane growers or to mark the bags for identification purposes. The Cane Commissioner can also order for regular inspections to ensure that the cane growers' bags are separate or marked. In this way the connection between the goods, the title and the purchase price remains clear cut. Title is retained by the cane grower and will not transfer until the sugar mill pays its dues. The result is that the cane grower is not left as an unsecured creditor and instead has the necessary security by virtue of the law to ensure payment is made for the sugarcane delivered.

42. Another important aspect of this case which cannot be ignored is the reasons for the creation of the pledge. The reasons clearly go to intent of the parties. In some of the cases before the Court (W.Ps. Nos.25932/16, 19515/16, 63883/17, 64911/17, 64254/17), the sanction letters issued by the Banks to the Sugar Mills clearly stipulate that the loan is being advanced to the Sugar Mills to make payments to the cane grower for the sugarcane purchased. So effectively the Sugar Mill requests for money from the Bank for a stated purpose. However, the cane growers were not paid and instead the Sugar Mills utilized the loan money elsewhere. Although the Banks deny any responsibility towards the manner in which the facilities are utilized, in the very least the sanction letters evidence the obligation of the Sugar Mills to pay the cane grower which obligation is recognized by the Banks and of which they have been put to notice. The Sugar Mills being cognizant of its obligation and borrows finance from the Bank to fulfill its obligation. The Bank approves the facility knowing that there is an obligation to pay the cane grower. Hence the right of the cane grower to receive payment is one which is neither denied nor disputed by the Banks or the Sugar Mills. The only issue for the Banks is with respect to the recovery of unpaid amounts from the pledged bags of sugar.

43. Pledge is defined in section 172 of the Contract Act to be as follows:-

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

The key ingredients of a pledge are bailment of goods and security for repayment of a debt. Bailment is defined in section 148 of the Contract Act as follows:-

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 "bailee".

Bailment requires delivery of goods for a purpose and the right to retain the goods until the purpose is achieved. Section 173 of the Contract Act provides that the pawnee may retain the goods pledged not only for payment of the debt but also for the interest of the debt and all necessary expenses incurred in respect of the possession or preservation of the goods. So the right of the pawnee is the delivery of goods which it can retain in its possession till the debt is paid. If the pawnor makes a default in payment of the debt, the pawnee can file a suit against the pawnor to recover his dues or else he can sell the pledged goods after giving the pawnor reasonable notice under Section 176 of the Contract Act. The right to sell the pledged goods arises only in the event of a default which means that the pawnee requires physical possession of the pledged goods if it is to be sold in the event of default. Reliance is placed on A.M. Burq and another v. Central Exchange Bank Ltd. and others (PLD 1966 Lahore 1). Hence the essential characteristic of the security interest of the pledgee is the right to possession of the goods and the right to sell the goods in case of default.

44. The Cane Commissioner took possession of the bags of sugar which as per the Bank were pledged with the Banks and lying in the control of the muqadam. However even this needs to be seen in the perspective of the Act and the Rules. The Banks have taken bags of white refined sugar as pledged security. The Banks require the Sugar Mills to maintain the stock value of the pledge so as to ensure that the security is intact. As per the regular stock reports filed with the Banks the quantity of the bags of sugar keeps fluctuating meaning that the bags of sugar are sold by the Sugar Mills with an effort to retain as close as possible to the secured amount and the Banks ensures that the value of its pledged stock is retained. Essentially as per market practice, the actual delivery of goods is not entrusted to the Bank and only constructive possession of the pledged goods is handed over. In this way the pledger can utilize the pledged goods in the ordinary course of business. Examples of such forms of pledge include the pledge of raw material and stock in trade where the goods cannot be kept in their original form for long and have to be consumed by the pledger in the normal course of business. Consequently there are fluctuations in the inventory which is constantly replenished by the pledgee. Hence the character of the pledge is not lost merely because of the fact that actual physical possession is not with the pledger or because the pledgee consumes the pledged goods. Reliance is placed on Messrs World Trans Logistics and others v. Silk Bank Limited and others (2016 SCMR 800). The stock reports filed in the Banks cases, reflect that bags of sugar retained by the Banks under the pledge at the time of

the pledge have not stayed in the physical custody of the Banks since. In fact the letters of pledge allow usage of the stock within an 18% margin. The Sugar Mills have been utilizing the bags of sugar while at the same time trying to retain the stock of the pledged bags of sugar. This goes to show that in normal course of business the character of the pledge remains intact at all times even if the stock position with respect to the bags of sugar are not reflective of the actual quantity pledged with the Banks. The relevance of this point is only to emphasize that the security interest of the Banks so far as the pledge is concerned does not diminish or deplete if the stock position is not maintained by the Sugar Mills. It also emphasizes the point that the Bank has the right to recover its debt at the time of default and in order to secure that right it is the objective of the Banks that the pledged security is maintained with the Sugar Mills. Therefore whether or not the Banks have actual physical possession of the pledged bags of sugar will in no manner infringe upon its rights as a secured creditor. Furthermore in the cases where the Sugar Mills are in default of their financial obligations to the Banks, recovery suits have been filed and in one case decreed. In these cases the Banks are before the court of competent jurisdiction which has the power to recover amounts secured by way of the pledge. This means that for the satisfaction of the decree by sale of pledged bags of sugar will be seen by the Court where the cases are pending. In the cases where there is no default the objective of the Bank is simply to retain possession of the bags so as to protect its security interest. In the event that the stock position is depleted the Bank can require the Sugar Mills to replenish the stocks to maintain its security. Hence no prejudice is caused to them.

45. Having found that the cane growers have the right to claim the value of the sugarcane delivered to the Sugar Mills, the right of the cane growers as the owner of the sugarcane is a superior right to all other rights, on the basis of which the cane grower is entitled to recover the value of the sugarcane from the sale of the bags of sugar. The security interests of the Banks remain intact, however the cane growers debt must be paid as provided under the Act and the Sugar Mills cannot shy away from this obligation by seeking protection of the bags of sugar for the benefit of the Bank. The cane growers before the Court have fulfilled their statutory obligations and delivered the sugarcane to the Sugar Mills yet the Sugar Mills have not fulfilled their obligation to pay the price of the sugarcane that was delivered to it. This Court cannot interpret the intent of the Act and the Rules so as to give the Sugar Mills an undue advantage over the cane growers, especially since the Act does not allow the sugar mill to take advantage of the cane grower and mandates the sugar mill to make payment of the sugarcane delivered. Therefore in order to ensure that the purpose of the Act is upheld, it is necessary to ensure that the cane grower is paid the value of the sugarcane. In the event that the Court does not maintain and enforce the purpose of the law and the cane growers are not paid, the purpose of the law will be defeated.

46. It is important to note that in the case of Brother Sugar Mills (W.P. No.4562/2016), the Court vide order dated 24.6.2016 sealed the premises to secure the bags of sugar from the illegal removal of the bags by the mill owners. On 12.7.2016 the Court ordered that the bags of sugar be sold and the amounts deposited in Court. These orders were made in the presence of the parties with the consent of the Banks, Mill Management and cane growers to secure the value of the bags of sugar, until this case was finally decided. On 27.3.2018 this Court was informed that in the Execution

Application No.92313/2017, an application under Order XXI, Rule 52 of the Code of Civil Procedure, 1908 (C.M. No.1/2017) was moved by Al-Baraka Bank (Pakistan) Limited on 6.12.2017 for the attachment of the property in the custody of the Court in W.P. No.4562/2016. The Court vide its order dated 19.3.2018 attached these amounts subject to the question of title or priority arising between the Bank and any other person subject matter of the petitions before the Court. Needless to say that order dated 19.3.2018 passed in banking jurisdiction cannot be made applicable to the proceedings of this Court in constitutional jurisdiction, especially with respect to the amounts in the custody of this Court from the sale of the bags of sugar. However the order of attachment itself reflects that the attachment is subject to decision of this Court with respect to title and priority of the amounts attached.

47. Therefore in view of the aforesaid, this Court holds that:

- i) The Cane Commissioner is the competent authority under the Act and the Rules to recover all dues of the cane growers, that is specifically to recover the price of the sugarcane delivered to the Sugar Mills;
- ii) The cane growers are entitled to the recovery of the value of the sugarcane delivered to the Sugar Mills under the Act and the Rules by sale of the bags of sugar lying in the Sugar Mills;
- iii) In this regard, the rights of the Banks with respect to their pledged security is not prejudiced by the acts of the Cane Commissioner as they have adequate remedy available to them for the recovery of their dues as well as for the recovery of the bags of sugar pledged by the Sugar Mills, from the court of competent jurisdiction;
- iv) Consequently all amounts lying with the Deputy Registrar (Judicial) of this Court in W.P. No.4562/2016 is to be released to the Cane Commissioner for disbursement to all the cane growers of Brother Sugar Mill as per the verified CPRs;
- v) Furthermore the Cane Commissioner shall immediately exercise powers under Section 6(2) of the Act to recover the dues of the cane growers with respect to Pattoki Sugar Mill and Darya Khan Sugar Mill;
- iv) Accordingly the Writ Petitions as detailed in Schedule A, filed by the cane growers are allowed and the Writ Petitions as detailed in Schedule B filed by the Banks are dismissed.

Schedule-A

**Details of Writ Petitions mentioned in judgment**

**Dated 24.11.2017 passed in W.P. No.4562/2016**

Sr. No	W.P. Nos.	Parties Name
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1	36257/16	Khuram Rasool v. Cane Commissioner, Punjab etc.
2	36258/16	Muhammad Ijaz v. Cane Commissioner, Punjab etc.
3	36389/16	Sardar Abdul Aziz v. Cane Commissioner, Punjab etc.
4	36390/16	Muhammad Latif v. Cane Commissioner, Punjab etc.
5	36391/16	Intizar Ahmad Khan v. Cane Commissioner, Punjab etc.
6	36392/16	Asghar Ali v. Cane Commissioner, Punjab etc.
7	36946/16	Muhammad Rafique v. Cane Commissioner, Punjab etc.
8	36951/16	Muhammad Aslam v. Cane Commissioner, Punjab etc.
9	36952/16	Abdul Ghafoor Tasleem v. Cane Commissioner, Punjab etc.
10	36953/16	Muhammad Ramzan v. Cane Commissioner, Punjab etc.
11	37131/16	Maqsood Ahmed v. Cane Commissioner, Punjab etc.
12	37132/16	Muhammad Imran v. Cane Commissioner, Punjab etc.
13	37133/16	Muhammad Younas v. Cane Commissioner, Punjab etc.
14	37134/16	Abdul Rauf v. Cane Commissioner, Punjab etc.
15	37135/16	Niaz Ali v. Cane Commissioner, Punjab etc.
16	37136/16	Muhammad Farooq v. Cane Commissioner, Punjab etc.
17	37139/16	Islam Din v. Cane Commissioner, Punjab etc.
18	37140/16	Ghulam Nabi v. Cane Commissioner, Punjab etc.
19	37544/16	Allah Ditta v. Cane Commissioner, Punjab etc.
20	37547/16	Zia ur Rehman v. Cane Commissioner, Punjab etc.
21	37549/16	Abdul Rasheed v. Cane Commissioner, Punjab etc.
22	38924/16	Muhammad Siddique etc. v. Cane Commissioner, Punjab etc.
23	39148/16	Muhammad Anwar etc. v. Cane Commissioner, Punjab etc.
24	2341/17	Muhammad Farooq etc. v. Cane Commissioner, Punjab etc.
25	2342/17	Sardar Muqaddas Ali etc. v. Cane Commissioner, Punjab etc.
26	2319/17	Muhammad Mushtaq etc. v Cane Commissioner, Punjab etc.
27	5657/17	Ali Touqeer Bhangou v Cane Commissioner, Punjab etc.
28	5658/17	Muhammad Sarwar v Cane Commissioner, Punjab etc.

29	9340/16	Fida Hussain v Cane Commissioner, Punjab etc.
30	9342/16	Muhammad Zaid Sultan v Cane Commissioner, Punjab etc.
31	11883/16	Abdul Ghaffar v Cane Commissioner, Punjab etc.
32	15377/16	Muhammad Jamil v Cane Commissioner, Punjab etc.
33	15398/16	Mohsin Nazir Malik v Cane Commissioner, Punjab etc.
34	26480/16	Kashif Amin etc. v Cane Commissioner, Punjab etc.
35	26481/16	Abdul Ghafoor Tahir etc. v Cane Commissioner, Punjab etc.
36	33435/16	Muhammad Afzal v Cane Commissioner, Punjab etc.
37	33437/16	Abdul Jabbar v Cane Commissioner, Punjab etc.
38	25939/16	Muhammad Azam v. Cane Commissioner, Punjab etc.
39	25940/16	Saleem Haider v. Cane Commissioner, Punjab etc.
40	31524/16	Ch. Muhammad Aslam v. Cane Commissioner, Punjab etc.
41	1712/17	Muhammad Yousaf v. Cane Commissioner, Punjab etc.
42	1714/17	Muhammad Imran v. Cane Commissioner, Punjab etc.
43	1716/17	Muhammad Hammad Umer v. Cane Commissioner, Punjab etc.
44	11582/16	Muhammad Arif etc. v. Cane Commissioner, Punjab etc.
45	37975/16	Imran Khan v. Cane Commissioner, Punjab etc.
46	37976/16	Hafiz Manzoor Ali Khan, Advocate v. Cane Commissioner, Punjab etc.
47	39183/16	Abdul Jabbar v. Cane Commissioner, Punjab etc.
48	39190/16	Muhammad Akram v. Cane Commissioner, Punjab etc.
49	39242/16	Asghar Ali Sajid v. Cane Commissioner, Punjab etc.
50	39244/16	Muhammad Aslam v. Cane Commissioner, Punjab etc.
51	25931/16	Sardar Iftikhar Ahmad Dogar v. Cane Commissioner, Punjab etc.
52	25933/16	Allah Ditta v. Cane Commissioner, Punjab etc.
53	25935/16	Bashir Ahmad Khan v. Cane Commissioner, Punjab etc.
54	25937/16	Muhammad Zaman v. Cane Commissioner, Punjab etc.

55	25938/16	Malik Shah Jahan Babar v. Cane Commissioner, Punjab etc.
56	4768/17	Subah Sadiq v. Cane Commissioner, Punjab etc.
57	37194/16	Muhammad Hanif v. Government of Punjab etc.
58	39229/16	Muhammad Tariq Naeem v. Government of Punjab etc.
59	39043/16	Muhammad Iqbal Javed etc. v. Cane Commissioner, Punjab etc.
60	39042/16	Munawar etc. v. Cane Commissioner, Punjab etc.
61	25934/16	Amanat Ali v. Cane Commissioner, Punjab etc.
62	25936/16	Jamil Ahmad v. Cane Commissioner, Punjab etc.
63	27795/16	Sarfraz Umer Khan etc. v. Government of Punjab etc.
64	36724/16	Faiz Ahmad etc. v. Government of Punjab etc.
65	39228/16	Muhammad Arshad v. Government of Punjab etc.
66	40300/16	Muhammad Yahyah v. Government of Punjab etc.
67	38934/16	Akhtar Hussain v. Cane Commissioner, Punjab etc.
68	38936/16	Abbas Ali etc. v. Cane Commissioner, Punjab etc.
69	39533/16	Malik Saif Ullah v. Cane Commissioner, Punjab etc.
70	39534/16	Muhammad Sarwar v. Cane Commissioner, Punjab etc.
71	39039/16	Liaqat Ali etc. v. Cane Commissioner, Punjab etc.
72	39530/16	Rana Mustansar Asif v. Cane Commissioner, Punjab etc.
73	39202/16	Rasheed Ahmad v. Cane Commissioner, Punjab etc.
74	4178/17	Muhammad Tufail etc. v. Cane Commissioner, Punjab etc.
75	4403/16	Muhammad Hanif v. Province of Punjab etc.
76	4656/17	Sardar Iftikhar Ahmad Dogar etc. v. Government of Punjab etc.
77	2824/16	Syed Najam ul Hassan Zaidi v. Cane Commissioner, Punjab etc.
78	1088/16	Munir Ahmad v. Secretary, Government of Punjab, Food Department etc.
79	22015/16	Shoukat Ali v. Cane Commissioner, Punjab etc.
80	22843/16	Sardar Jahanzeb Ali v. Cane Commissioner, Punjab etc.
81	37474/16	Muhammad Yasin v. Cane Commissioner, Punjab etc.
82	77451/17	Sardar Muhammad Ashraf v. Sugarcane Commissioner, Punjab etc.
83	8347/17	Abdul Majeed etc. v. Cane Commissioner, Punjab etc.
84	4608/17	Asghar Ali etc. v. Cane Commissioner, Punjab etc.
85	5040/17	Muhammad Khalid v. Government of Punjab etc.
86	459/17	Muhammad Sabir etc. v. Cane Commissioner, Punjab etc.

87	91863/17	Abdul Majeed etc. v. Cane Commissioner, Punjab etc.
88	28102/16	Liaquat Ali v. Cane Commissioner, Punjab etc.
89	2321/17	Muhammad Javed v. Secretary, Government of Punjab, Food Department etc.
90	26535/16	Sardar Muhammad Farooq, Advocate v. Secretary, Government of Punjab, Food Department etc.
91	103764/17	Muhammad Iqbal v. Cane Commissioner, Punjab etc.
92	8194/17	Tariq Azam Khan v. Government of Punjab etc.
93	50197/17	Ch. Khurshed Ahmad v. Cane Commissioner, Punjab etc.
94	4169/17	Noor Muhammad etc. v. Cane Commissioner, Punjab etc.

**Schedule-B**

**Details of Writ Petitions mentioned in judgment**

**Dated 24.11.2017 passed in W.P. No.4562/2016**

<b>Sr. No</b>	<b>W.P. Nos.</b>	<b>Parties Name</b>
1	4562/16	Al-Baraka Bank (Pakistan) Limited v. Province of Punjab through Secretary Food etc.
2	4650/16	JS Bank Limited v. Province of Punjab through Secretary Food Department etc.
3	10377/16	Bank of Khyber v. Brother Sugar Mills Ltd. etc.
4	19515/16	Summit Bank Limited v. Cane Commissioner, Punjab etc.
5	25932/16	National Bank of Pakistan v. Cane Commissioner, Punjab etc.
6	63883/17	United Bank Limited v. Government of Punjab etc.
7	64254/17	MCB Bank Limited v. Province of Punjab etc.
8	64911/17	MCB Bank Limited v. Province of Punjab etc.
9	67851-17	Meezan Bank Limited v. Government of Punjab etc.

KMZ/A-22/L Order accordingly.