

2013 C LD 216
[Islamabad]
Before Noor-ul-Haq N. Qureshi, J

NASEEMUL ALI, EX. CHIEF EXECUTIVE OFFICER OF TRUST MANAGEMENT SERVICES (PVT.) LTD.
TRUST MODARBA---Petitioner

versus

EXECUTIVE DIRECTOR. SECURITIES, AND EXCHANGE COMMISSION OF PAKISTAN and another---
Respondents

Writ Petition No. 1803 of 2010, heard on 16th October, 2012.

Raja Imran Aziz for Petitioner.

Sultan Mazhar for respondents.

Date of hearing: 16th 5 October, 2012.

JUDGMENT

Petition dismissed.

[Securities and Exchange Commission of Pakistan Act (XLI1 of 1997)]--Sections 34 81, 33---
Constitution of Pakistan. Art. 199-Constitutional petition---Maintainability-Alternate adequate
remedy- Petitioner impugned order of Securities and Exchange Commission imposing fine upon
him against which his appeal was dismissed by the Appellate Bench of the Commission--Validity---
Petitioner had availed right of appeal under 5.33 of the Securities and Exchange Commission of
Pakistan Act, 1997 which was dismissed and further appeal to the High Court as provided by S.34
of the Securities and Exchange Commission of Pakistan Act 1998 was available to him, which he
did not avail---Constitutional Petition, was therefore, not maintainable and was dismissed, in
circumstances.

Khalid Mahmood v. Collector of Customs, Lahore 1999 SCMR 1881 and Collector of Customs and
others y. Universal Gateway Trading Corporation and another 2005 SCMR 37 rel.

NOORJUL-HAQ N. QURESHI, J.--The claim urged in the petition by Impugning the judgment dated
18-3-2010 passed by the respondents thereby request for waiving off the penalty amount upon
the petitioner.

2. After elaborate arguments by both the sides, learned counsel for the respondents has agitated
the maintainability of the instant writ petition in view of sections 33 and 34 of the Securities and
Exchange Commission of Pakistan Act, 1997. He emphasized that actually, the appeal is to be
referred to the Appellate Bench of the Commission, which the Petitioner did, where-after,
another appeal lies to the High Court as required by section 34 of the same Act.

3. I have gone through the relevant provisions of law referred above. However, for convenience,
same are being reproduced herein below:--

“33. Appeal to the Appellate Bench .of the Commission

(1) An appeal shall lie to an Appellate Bench of the Commission in respect of an order of the
Commission made by one Commissioner. The person aggrieved by such order may within thirty
days of the passing of the order prefer on appeal to the Appellate Bench of the Commission.

(2) The Commission shall constitute an Appellate Bench of the Commission comprising not less than two Commissioners to hear appeals under subsection (1).

(3) If any Commissioner who is included in the Appellate Bench has participated or been concerned in the decision being appealed against the Chairman shall nominate another Commissioner to sit in the Bench to hear that appeal.

(4) The form in which an appeal is to be filed and the fees to be paid therefore and other related matters shall be prescribed by rules.

34. Appeal to the Court---(1) An appeal shall lie to' the Court referred to in Part 1 of the Ordinance in respect of an order of the Commission comprising two or more Commissioners or the Appellate Bench.

(2) The appeal under subsection (1) may be filed within sixty days of the date of the decision and shall be accompanied by a fee of one hundred rupees."

4. Learned counsel for the respondent has argued that adequate remedy is available to the petitioner, the when statutory bar of jurisdiction has been discussed in various authorities delivered by the august Supreme Court of Pakistan. He referred 1999 SCMR 1881 (Khalid Mahmood v. Collector of Customs, Lahore) and 2005 SCMR37 (Collector of Customs and others v. Universal Gateway Trading Corporation and another), whereby their lordships have observed that constitutional jurisdiction not to exercised when alternate efficacious remedy is available under the relevant provisions of law.

5. In the instant case, adequate remedy available to the petitioner has been availed and further appeal as provided by section 34 of the Securities and Exchange Commission of Pakistan Act: 1997 by preferring appeal against the said order is also available to him, which he did not avail. Therefore, in my humble view, instant petition suffers from such technicalities, hence. same being non-maintainable, is hereby dismissed.