

**CHADY S.B. v HABIB BANK**  
**[Court of Civil Appeal]**  
**2018 SCJ 363**  
**SUMMARY**

**Facts:** This is an appeal against an interlocutory judgment of the Supreme Court dismissing the plaint with summons entered by the appellant against the respondent on the ground of abuse of process. The appellant stood as guarantor for banking facilities and her immovable property was seized by the respondent. Subsequently, the appellant filed an “Incidental Application” challenging the validity of the seizure proceedings before the Master’s Court. The Master, after hearing arguments, set aside the incidental application and ordered the sale to proceed. The appellant therefore appealed against the decision of the Master, which appeal was dismissed by the Supreme Court. Thereafter, the appellant lodged a plaint with summons for constitutional redress under Section 17 of the Constitution before the Supreme Court, which was as well dismissed on the ground of abuse of process. The appellant had also lodged another plaint with summons seeking erasure of the seizure, an order for the respondent to put an end to the sale by levy proceedings and an order for damages. However, the Court of Appeal upheld the plea in limine taken by the respondent on the ground of abuse of process and dismissed the appeal. The appellant has now appealed to the Court of Civil Appeal.

**1<sup>st</sup> Issue:** Did the respondent raise the plea at a late hour?

**2<sup>nd</sup> Issue:** Whether the plea of res judicata was rightly taken since the action before the Master for a stay of the sale and the present plaint with summons were based on different causes of action?

**3<sup>rd</sup> Issue:** Whether the plaint with summons amounted to “relitigation”?

**4<sup>th</sup> Issue:** Whether the Master’s Court, being a Court of summary jurisdiction, the appellant was entitled to seize the Competent Court, which is the Supreme Court in its original jurisdiction?

**Held:**

As regards the first issue, the Court held that a defence in law may be raised at any stage of the pleadings prior to judgment. As regards the second issue, the Court held that the learned trial Judge did not uphold the plea of res judicata inasmuch as “the requirement of threefold identity namely, same demand, same cause of action and the same parties acting in the same capacity was not satisfied”. As for the issue of relitigation, the Court held that the learned Judge cannot be faulted for finding that the issues raised by way of incidental application and the issues raised in the plaint with summons were substantially the same and that there was ample basis to establish that the appellant could not be allowed, by changing the form of the proceedings, to come up again with a plaint with summons which constituted nothing else than a collateral attack against a final decision which had already disposed of all the issues which were being raised anew by the appellant in the plaint. Such a course of action was grossly abusive and it was indeed incumbent upon the learned Judge to put an end to such an abusive exploitation of litigation process. Finally, as regards the fourth issue, the Court held that the appellant had ample opportunity in the course of the incidental application to substantiate all the allegations and averments that the sale by levy proceedings were arbitrary, unjustified, illegal and null and void. Moreover, the Appellate Court made a final determination of the averments put forward by the appellant who clearly made an abuse of process by pressing anew with the same contentions in her plaint with summons.

**This summary is provided to assist in understanding the Court’s decision. The full judgment of the Court is the only authoritative document.**

## **Short Summary**

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In the present matter, the trial Judge upheld a plea of abuse of process and dismissed the plaint. The Court of Civil Appeal held that a plea in limine can be taken at any time before judgment and that the Judge was right in finding that a plea of res judicata would not apply in the present case. It also sided with the reasoning of the trial Court that there was an issue of relitigation and that the appellant had the opportunity to substantiate all averments before the Master. The appeal was dismissed.