IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Ist Appeal No.D-05 of 2020
Ist Appeal No.D-06 of 2020

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE.

1. *For hearing of CMA No.105/20.*
2. *For hearing of main case.*
3. *For hearing of CMA No.106/20.*

03.09.2026

M/s Mukesh Kumar Talreja and Agha Shahzaib, Advocate for Appellants.

Mr. Faheem Majeed Memon, Advocate for Respondent No.1.

Mr. Abdul Sattar Mahessar, Advocate for legal heirs of Respondent No.3 in both the Appeals.

Mr. Fareed Ahmed Soomro, Advocate for respondent No.5-United Band Limited.

****

JUDGMENT

Both Appeals heard.

Crux of the arguments of Mr. Mukesh Kumar, the Appellants' Counsel, is that Suit No.163 of 1999 **(earlier Suit)** filed by Respondent No.1-Regional Development Finance Corporation **(RDFC)-Bank** against the present Appellants **(Customers)** was decreed in terms of Order 17 Rule 3 of Civil Procedure Code **(CPC)** although the testimony of the Plaintiff-Bank was recorded, and on the same date the Suit No.372 of 2015 filed by the Customer **(Present Appellants)** was dismissed by invoking Section 11 of CPC, for the reason, that controversy since has been decided in the earlier above Suit, therefore, the subsequent Suit of the Customer is not maintainable. He states that Section 11 cannot be invoked in such a manner, because there was no independent determination of right and interest of the parties to the litigation.

Mr. Abdul Sattar Mahessar, Advocate appearing for the legal heirs [(present Respondents No.3(c)to(e)] of the original Respondent No.3-Muhammad Khan, who stood as guarantor of the Finance facility, has not opposed the arguments of the Appellants Counsel.

Whereas Mr. Fareed Ahmed Soomro, the Counsel for United Bank Limited-Respondent No.5, has stated that the Appellants-Customer have cleared the outstanding Finance facility and they have no monetary claim against the Appellants.

This Appeal is opposed by Mr. Faheem Majeed Memon, the Counsel for RDFC-Bank; and has supported the Impugned Judgment. He further states that the subsequent Suit of the present Appellants (Customer) was tainted with malafide as it was filed after many years and they have not cleared the outstanding liability.

Arguments heard, record perused.

The Judgment in the earlier Suit No.163 of 1999 has been perused in which after framing of issues, Piyaro Khan Abbasi, Incharge Manager Recovery of the Bank testified and closed his side. Whereafter on behalf of the Appellant-Customer two witnesses filed their Affidavit-in-Evidence alongwith Applications including the one to bring legal heirs on record of Appellant No.3 Agha Niaz Hussain Khan. All those Applications were dismissed on the same date without issuing of notice. This is evident from the Court diary of 21.11.2019 which is part of the record. On 14.12.2019 when the Impugned Judgment in the earlier suit was passed, record shows that the Appellant-Customer sought adjournment as one of the two witnesses were not present. The Impugned Judgment observes that the Appellant-Customer informs the Court that they have filed a Transfer Application and will not give the evidence; consequently, the request was dis-allowed and the Judgment was passed by invoking Order 17 Rule 3 of CPC. The said provision is usually invoked when the parties did/do not produce the evidence, even after allowing time by the Court. Secondly, the other requirement is that the Judgment is to be given on the basis of pleadings and the record available and not in haste as is done by the learned Banking Court.

If one of the witnesses, namely, Agha Shahzaib, Appellant-Customer was present then he should have been examined and merely by observing that he did not enter the witness box, is not suffice; conversely, it shows somewhat helplessness on the part of the Court, which should not exist.

Finding of fraud is given against the Appellants (Customer) <u>without discussing the evidence</u>; similarly how much finance facility was availed, adjusted and mark-up accrued, nothing is discussed. The illegality does not stop here, that is, in the Judgment given in the Suit filed by the Respondent No.1-Bank, but on the basis of this Judgment on the same date the second Judgment is given in the subsequent Suit of the Appellant-Customer, purportedly in terms of Section 11 of the Civil Procedure Code. This blatant illegality cannot be ignored.

Consequently, both the above Judgments cannot be sustained and interference is required in this Appellate Proceedings, because both the above provisions (Section 11 and Order 17, Rule 3 of CPC) have been mis-applied, rather mis-interpreted to hand down the impugned Judgments. It means that the jurisdiction was not properly exercised by the Banking Court which decided the matter in a slipshod manner.

Upshot of the above is that both the Impugned Judgments are set-aside. Matters are remanded to the Court. The concerned Banking Court will decide the Suits within three months. One chance will be given to the Appellant-Customer to adduce the evidence failing which the matter will proceed further.

Both Appeals disposed of in the above terms.

J U D G E

J U D G E

Ihsan/PS