IN THE HIGH COURT OF SINDH CIRCUIT COURT AT HYDERABAD

1st Appeal No.D-59 of 2021

Present:
Mr. Justice Khadim Hussain Tunio
Mr. Justice Jan Ali Junejo

Appellants	:	The President MCB Bank Limited and others through Mr. Adil Khan Abbasi, Advocate
Private Respondent	:	Ghulam Hyder son of Muhammad Ibrahim through Mr. Zulfiqar Ali Arain, Advocate
Date of Hearing	:	03.09.2025
Date of Judgment	:	26.11.2025

J U D G M E N T

Jan Ali Junejo, J.- This First Appeal, filed under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (hereinafter referred to as *"the FI Ordinance"*), is directed against the Judgment and Decree dated 10.09.2021 (hereinafter referred to as the *"Impugned Judgment and Decree"*) passed by the learned Presiding Officer, Banking Court No.II, Hyderabad, in Suit No. 07 of 2014. Through the Impugned Judgment, the suit of the Respondent/Plaintiff was partly decreed, directing the Appellants/Defendants to furnish a certified statement of account and to hand over/return the vehicle, a Suzuki Alto VXR, Registration No. APS-648.

2. The Respondent/Plaintiff (hereinafter "the Plaintiff") instituted Suit No.07 of 2014 seeking recovery of moveable property (the vehicle), declaration, permanent injunction, and damages. His case, in essence, was: a. He availed a car finance facility for a Suzuki Alto VXR, Registration No. APS-648, originally from NIB Bank Limited (which later merged with MCB Bank Limited, the Appellants). b. At the time of sanction, the Bank obtained his signatures on blank documents, in violation of Section 18(1) of the FI Ordinance, and failed to provide him with copies despite repeated requests. c. He paid a down payment and monthly installments from October 2007 to November 2012, total 62 installments regularly and was never in default for three consecutive months. d.

On 25.12.2012, the Bank's officials forcibly repossessed the vehicle from his driver near Tando Allahyar, an act he claimed was illegal, high-handed, and in violation of State Bank of Pakistan's prudential regulations and guidelines for fair debt collection. e. He was ready and willing to pay any outstanding amount upon settlement of a truthful account but the Bank refused to provide the same. f. He prayed for: (i) a direction to the Bank to furnish a certified statement of account; (ii) return of the vehicle; (iii) damages of Rs.50,000/-; (iv) write-off of markup and other charges; and (v) a permanent injunction.

3. The Appellants/Defendants (hereinafter “the Bank”) contested the suit, inter alia, on the following grounds:

a. Res Judicata: The suit was barred by Section 11 of the CPC as a previous suit (Suit No. 13 of 2013) between the same parties on the same cause of action had been filed and dismissed.

b. Valid Repossession: The Plaintiff had executed a Letter of Hypothecation, Irrevocable Power of Attorney, and an Authorization Letter, expressly authorizing the Bank to repossess the vehicle upon default of a single installment. The repossession was thus a contractual and statutory right under Section 16 of the FI Ordinance.

c. Auction of Vehicle: The repossessed vehicle was legally sold in a public auction before the filing of the present suit. The suit for recovery of the specific vehicle had thus become infructuous due to the intervention of a third-party purchaser, who was a necessary party but had not been impleaded.

d. Default in Payment: The Plaintiff was a chronic defaulter. The payments he cited were often misallocated or pertained to a separate personal loan account. The certified statement of account (Ex.D/20) showed a significant outstanding amount.

e. Non-Joinder of Necessary Party: The original financier, NIB Bank Ltd., was not made a party.

f. Deficiency of Court Fees: The Plaintiff had not paid the requisite court fee on the claim for damages.

The learned Banking Court framed seven distinct issues for adjudication. After a full trial, which involved the recording of affidavits and the submission of a substantial volume of documentary evidence by both parties, the Court delivered a judgment that partly decreed the suit. Specifically, the Court allowed prayers (a) and (b), thereby directing the Appellant-Bank to furnish a complete certified statement of account and, more significantly, to hand over the physical possession of the vehicle to the Respondent. A careful review of the Impugned Judgment shows that the learned Banking Court examined each framed issue methodically and arrived at findings which are supported by the material available on

record. The conclusions reached by the Court are legally sustainable and call for no interference in appeal. The findings on the key issues are summarized as follows:

> • **Issue No. 1 (Maintainability – Res Judicata):** The learned Banking Court held the suit to be maintainable. It correctly observed that the earlier suit (Suit No. 13 of 2013) had been dismissed for non-prosecution and, therefore, was not a decision on merits. In terms of settled law, such dismissal does not attract the bar of Section 11 CPC nor does it extinguish the underlying cause of action. The finding that the suit was competent is, therefore, proper and in accordance with law.
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> • **Issue No. 2 (Payments as per agreement):** On the question whether the Plaintiff had made payments in terms of the finance agreement, the learned Court accepted the Plaintiff's documentary and oral evidence showing regular installment payments covering the relevant period. The trial Court, upon comparing both sets of documents, preferred the Plaintiff's version as being more reliable. This appreciation of evidence is a plausible conclusion based on the record and does not warrant appellate interference.
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> • **Issue No. 3 (Repossession in accordance with law):** Having found no established default, the learned Court held that the repossession of the vehicle was not in accordance with law. The Court took into account the circumstances of the seizure, the absence of prior notice, and the lack of any reliable evidence showing that the Bank had fulfilled contractual or regulatory prerequisites before taking possession. On these premises, the finding that the repossession was unlawful flows logically from the preceding determination regarding payments and is supported by the evidentiary record.
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> • **Issue No. 4 (Authorization to repossess):** The learned Court acknowledged that the Plaintiff had executed certain documents—such as the letter of authorization and power of attorney—empowering the Bank to repossess the vehicle in the event of default. However, given the Court's earlier finding that default was not established on credible evidence, it rightly held that the contractual right to repossess did not arise. The finding harmonizes the contractual terms with the factual determination on payments and does not contain any inconsistency.
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> • **Issue No. 5 (Suit filed as per Section 9 of the FIO, 2001):** The learned Court observed that, in the circumstances of the case, this issue did not materially affect the determination of rights between the parties, as the primary reliefs sought were directly connected with the finance facility and the related hypothecated vehicle. The suit, as framed, was within the jurisdiction of the Banking Court, and the manner in which this issue was addressed does not disclose any legal infirmity.
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> • **Issue No. 6 (Relief/Decree):** Upon resolving the material issues in favour of the Plaintiff, the learned Court partly decreed the suit by directing the Bank to furnish a certified statement of account and to restore the vehicle to the Plaintiff. These directions flowed naturally from the findings that the Plaintiff had not been proved to be a defaulter and that the repossession was unlawful. The relief granted is aligned with the principles of restitution and fairness, and no error has been demonstrated which would justify interference.

5. Mr. Adil Khan Abbasi, learned counsel for the appellants, vehemently assailed the Impugned Judgment. He argues that the learned Judge committed a grave error by ignoring the most crucial fact established on record that the vehicle had already been sold through a public auction. Consequently, the suit was filed for the recovery of the specific vehicle had become infructuous, and the direction to "hand

over/return the vehicle" was impossible to implement and legally untenable. He further contends that the finding that the plaintiff was not a defaulter is perverse and based on a misreading of evidence, as the Bank's certified statement of account and supporting contractual documents conclusively established irregular payments and a significant outstanding liability. The plaintiff's own exhibit (Ex.P/9), he submits, was incomplete and failed to demonstrate consistent or timely payments. He also maintains that the learned Judge misconstrued the scope of Section 16 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, which empowers a financial institution to directly repossess hypothecated movable property without the necessity of instituting a suit, a right expressly recognized and reinforced through the contractual documents signed by the plaintiff. He further argues that although the finding on *res judicata* may be technically correct, it is of no consequence since the suit was liable to dismissal on the substantive grounds that the vehicle had already been sold and the plaintiff was in default. Lastly, he asserts that the plaintiff's claim of having signed blank documents was a bald, unsubstantiated allegation, effectively rebutted by the detailed, duly executed documents produced by the Bank. In conclusion, the learned counsel prays for allowing the appeal.

6. Mr. Zulfiqar Ali Arain, learned counsel for the respondent, supported the Impugned Judgment in its entirety. He contends that the repossession of the vehicle was illegal, arbitrary, and high-handed, having been carried out without adherence to due process and in a manner that subjected the plaintiff to humiliation, in violation of the State Bank's prudential guidelines. He argues that the Banking Court rightly accepted the plaintiff's evidence regarding regular payment of installments, while the Bank's statement of account was vague, confusing, and self-serving. He further submits that the purported auction of the vehicle, if it indeed took place, was invalid as it stemmed from an unlawful repossession; hence, the Bank cannot be permitted to profit from its own wrongdoing. He maintains that the plaintiff had always been ready and willing to discharge his liabilities, but the Bank's failure to provide a clear and transparent statement of account prevented him from doing so. Lastly, he prays for dismissal of appeal.

7. We have considered the arguments advanced by the learned counsel for the parties and examined the evidence available on record with their able assistance. After a thorough scrutiny of the memoranda of appeal, the impugned judgment, and the entire record of the Banking Court, we find no ground to warrant appellate interference. The prior suit (Suit No.13 of 2013) was dismissed for non-prosecution. It is well settled

that a dismissal for non-prosecution is neither a decision on the merits nor an adjudication inter partes; consequently, Section 11 CPC is not attracted. The cause of action survived, and the Plaintiff was competent to institute fresh proceedings. The learned Banking Court correctly held the suit maintainable. No perversity, misdirection, or jurisdictional defect is shown in this regard. The Plaintiff's consistent case was that he paid a down payment and 62 monthly installments between October 2007 and November 2012 and was never in default for three consecutive months. He produced his record of payments. In contrast, the Bank relied on a purported certified statement of account while simultaneously alleging misallocation and cross-adjustments with another personal loan.

8. In finance suits, the financial institution bears the burden to produce a duly certified, complete, comprehensible, and self-speaking statement of account in conformity with the Bankers' Books Evidence Act and applicable prudential requirements. Such a statement must reflect the ledger, principal, markup application, dates of debit/credit entries, and the basis of charges. The statement produced by the Bank fell short of these requirements. The Banking Court therefore preferred the Plaintiff's evidence of regular payments. That appreciation of evidence, being plausible and grounded in the record, does not warrant substitution in appellate jurisdiction. The Bank's allegation of "chronic default" rested largely on asserted cross-postings with another account. Absent clear mandate, proper disclosure, and supporting documentation, unilateral cross-adjustments cannot be used to designate a customer as a defaulter in the subject facility. The Bank's contractual documents authorized repossession only "upon default"; once default is not established on reliable accounts, the foundation for repossession collapses. Section 16 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 does recognize a financial institution's right, in appropriate cases, to take possession of hypothecated movable property in accordance with law and contractual terms. However, the exercise of such right is conditioned by a bona fide determination of default, fair dealing, adherence to prudential regulations, timely notice, and a transparent process. Self-help remedies do not authorize high-handedness or deprivation without minimum due process. The Banking Court, having found no proved default and noting the circumstances of forcible seizure from the Plaintiff's driver, rightly held that the repossession was unlawful. The Bank did not establish prior notices of default, any call-up, or opportunities to cure; nor did it produce a contemporaneous repossession memorandum served on the customer or evidence of neutral custody pending settlement. Bare invocation of Section 16 cannot sanitize a repossession carried out in

breach of contractual and prudential norms. The finding of illegality is sound and calls for no interference.

9. The Bank contended that the vehicle was sold in auction even before institution of Suit No. 07 of 2014. This plea does not defeat the Plaintiff's claim for restoration. Two reasons prevail:

(a) A sale based on an unlawful repossession conveys no superior title. The doctrine that no party may profit from its own wrong squarely applies. The Bank, having failed to prove lawful repossession and compliance with mandatory pre-sale formalities, such as valuation, reserve price, public notice, competitive bidding, borrower's intimation, and a post-sale appropriation statement, cannot rely on such sale as a shield.

(b) The plea of non-joinder of the alleged auction purchaser also fails. When the sale is derivative of the impugned unlawful act, and the primary relief sought is restoration of possession upon setting aside that act, the purchaser is not a necessary party. The Banking Court's direction for return of the vehicle accords with equitable restitution. If supervening impossibility is claimed, the burden lies on the Bank to first prove a valid sale through cogent evidence, something it failed to do.

Accordingly, the contention that the suit or decree was "infructuous" is misconceived. The direction to furnish a complete and duly certified statement of account is salutary and necessary. It ensures transparency, facilitates proper settlement, and addresses the ambiguity arising from the Bank's shifting stances on allocation and outstanding liability. The decree to this extent is both lawful and equitable.

10. Under Section 22 of the FI Ordinance, appellate interference lies only where findings are perverse, arbitrary, or based on misreading or non-reading of material evidence. In the present case, the learned Banking Court marshalled the evidence, identified deficiencies in the Bank's accounting, interpreted contractual documents correctly, and reached reasoned conclusions. The Appellants have failed to demonstrate any illegality, misdirection, or perversity warranting reversal. The impugned Judgment is detailed, logical, and consistent with governing legal and equitable principles. Following the merger of NIB with MCB, the latter is the proper party. No prejudice is shown. The decree does not award damages; thus, no infirmity attaches to the operative part. Even if disputed, this issue does not affect the outcome given the Bank's failure to prove default or due process in repossession.

11. For the foregoing reasons, the Appeal fails. The Judgment and Decree dated 10.09.2021 passed by the learned Presiding Officer, Banking Court No. II, Hyderabad in Suit No. 07 of 2014 are upheld. The

Appeal, being devoid of merit, stands dismissed. The Appellant-Bank shall:

(a) Furnish to the Respondent a complete, duly certified, legible, and self-speaking statement of account of the subject finance facility from inception to closure, reflecting all debits, credits, markup applications, charges with basis, and appropriations.

(b) Restore possession of the vehicle Suzuki Alto VXR, Registration No.APS-648 to the Respondent. If restoration in specie is not possible, the Banking Court shall, on application, consider appropriate restitutionary relief consistent with this judgment, including but not limited to compensation based on fair market value at the time of deprivation, along with any ancillary relief permissible in law.

Parties shall bear their own costs. Decree be drawn accordingly. The office shall transmit a certified copy of this judgment to the learned Banking Court for information and necessary action.

JUDGE

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