

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

First Appeal No.122 of 2011

Appellants : M/s. Karachi Dal Mill & others
through Mr. Rafiq Ahmed Kalwar,
Advocate

Respondent : M/s. National Bank of Pakistan
through Mr. Muhammad Khalid, Advocate

Date of Hearing : 07.09.2026

Date of Judgment: _____.09.2026

J U D G M E N T

Amjad Ali Sahito, J.- The instant First Appeal has been preferred under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, whereby the appellants have called in question the Judgment and Decree dated 06.10.2011 passed by the learned Judge, Banking Court-I, Hyderabad in Suit No.80 of 2009. Through the impugned Judgment and Decree, the suit instituted by the respondent/National Bank of Pakistan (hereinafter referred to as the “**Bank**”), seeking recovery of Rs.90,00,000/- along with liquidated damages, costs, cost of funds and other consequential reliefs, was decreed to the extent of Rs.90,00,000/- against the appellants jointly and severally, together with costs and cost of funds from the date of default until realization, whereas the claim for liquidated damages was declined. The appellants had initially filed an application for leave to defend the suit under Section 10 of the Financial Institutions (Recovery of Finances) Ordinance, 2001; however, the same was dismissed for non-prosecution vide order dated 16.06.2010. The subsequent application filed by the appellants seeking restoration of the said leave to defend application was also dismissed. Thereafter, upon consideration of the documents

produced by the Respondent-Bank, the learned Banking Court decreed the suit in favour of the Respondent-Bank.

2. Briefly stated, the case set up by the respondent-Bank before the learned Banking Court was that a Cash Finance facility in the sum of Rs.90,00,000/- had been sanctioned in favour of appellant No.1, namely M/s. Karachi Dal Mill, against securities furnished by the appellants. Appellants Nos.2 to 4 had stood as guarantors, whereas appellant No.1 had created security in favour of the Respondent-Bank by way of mortgage and pledge of stocks. According to the Respondent-Bank, a total amount of Rs.1,13,91,302/- had been debited to the account of appellant No.1, against which an amount of Rs.23,91,302/- had been paid, leaving a balance of Rs.90,00,000/- outstanding and recoverable from the appellants.

3. Upon service of the suit, the appellants entered appearance and filed an application for leave to defend under Section 10 of the Ordinance. In the said application, while admitting the finance facility and the securities furnished in favour of the Respondent-Bank, the appellants disputed their liability on various grounds. Their principal contention was that the pledged stock was lying in the godown under the control and custody of the Respondent-Bank and that officials of the Bank had allegedly removed the pledged goods on 24.07.2008, prior to the date which, according to the appellants, had been fixed for adjustment of the finance facility. It was further alleged that the Respondent-Bank had failed to account for the pledged stock and the alleged proceeds of its sale and that no notice regarding any shortage or disposal of the pledged goods had ever been served upon the appellants. Reliance was also placed upon Suit No.69 of 2008, stated to have been instituted by the appellants against the Respondent-Bank in respect of the same controversy.

4. The record, however, reflects that the application for leave to defend was not decided on merits. On 08.06.2010, the Respondent-Bank filed its replication, whereafter the matter was fixed for hearing of the application for leave to defend on 16.06.2010. On the said date, learned counsel for the

Respondent-Bank was present; however, despite repeated calls, no one appeared on behalf of the defendants. Consequently, the learned Banking Court dismissed the application for leave to defend for non-prosecution and directed the Respondent-Bank to produce the original documents. The original documents were thereafter produced and perused by the learned Banking Court, and the matter was fixed for final arguments.

5. Thereafter, the appellants filed an application under Section 151 CPC seeking restoration of their application for leave to defend. The matter remained pending; however, the appellants ultimately failed to secure restoration of the said application. As recorded in the impugned Judgment, the restoration application was dismissed on 27.09.2011. Subsequently, upon consideration of the material produced by the Respondent-Bank, including the original finance documents and the statement of account, the learned Banking Court proceeded to decree the suit vide Judgment and Decree dated 06.10.2011. Hence, the instant appeal.

6. Learned counsel for the appellants has primarily contended that the learned Banking Court erred in dismissing the application for leave to defend for non-prosecution and thereafter proceeding to decree the suit without examining the questions of fact specifically raised by the appellants with regard to the pledged stock. It is argued that the appellants had categorically alleged that the pledged goods had been removed by officials of the Respondent-Bank prior to the date fixed for adjustment of the finance facility and that the said controversy could only appropriately be adjudicated after affording the parties an opportunity to lead evidence. It is further contended that, since the appellants had been pursuing their application under Section 151 CPC for restoration of the leave to defend application, they ought to have been afforded an opportunity to contest the suit on its merits. According to learned counsel, the impugned Judgment and Decree were consequently rendered without proper consideration of the material questions arising between the parties and without due application of judicial mind. In support

of his submissions, learned counsel has relied upon the judgments in *Imtiaz Rasool and another vs. Deutsche Bank and 7 others* (2016 CLD 1059), *Agricultural Development Bank of Pakistan (ZTBL) through Branch Manager and another vs. Allah Yar through Special Attorney and 4 others* (2013 CLD 2230), *M/s. Shaz Packages & others vs. M/s. Bank Alfalah Limited* (SBLR 2011 Sindh 1213), and *Messrs Noor Flour Mills through Sole Proprietor and another vs. Judge Banking Court Balochistan, Quetta and another* (2011 CLD 1263).

7. Conversely, learned counsel for the Respondent-Bank has supported the impugned Judgment and Decree and submitted that the appellants were afforded adequate opportunity to avail the statutory remedy of leave to defend, but failed to diligently prosecute the same. It is submitted that the appellants had earlier instituted Suit No.69 of 2008 in respect of the alleged removal of the pledged goods, which suit was subsequently dismissed. Thereafter, in the recovery proceedings instituted by the Respondent-Bank, the appellants filed an application for leave to defend, but failed to appear when the same was fixed for hearing, with the result that the application was dismissed for non-prosecution. Learned counsel further submits that the subsequent application filed under Section 151 CPC also did not result in restoration of the leave to defend application. It is, therefore, contended that the appellants, having failed to diligently prosecute the proceedings despite having been afforded opportunities by the learned Banking Court, cannot now seek indulgence as a matter of right or claim a further opportunity to contest the suit on merits.

8. We have considered the submissions advanced by learned counsel for the parties and have carefully examined the material available on the record.

9. There is no dispute that the appellants availed the finance facility from the Respondent-Bank. The record shows that appellant No.1, namely M/s. Karachi Dal Mill, through appellants Nos.2 to 4, approached the Respondent-Bank in the month of March and sought grant of a Renewal Finance facility

under the Cash Finance Pledged Scheme for the purpose of expansion of its business. Appellants Nos.2 to 4 stood as guarantors for the said facility. Pursuant thereto, the appellants availed and utilized a finance facility of Rs.90,00,000/-. The Respondent-Bank produced the statement of account, which reflects that a total amount of Rs.1,13,91,302/-, inclusive of the amount advanced/paid and mark-up debited to the account, was outstanding against appellant No.1. Against the said liability, an amount of Rs.23,91,302/- was paid up to 31.12.2008, leaving a balance of Rs.90,00,000/- outstanding and payable. The said amount has admittedly remained unpaid for a considerable period. Learned counsel for the appellants, however, primarily contended that since the application for leave to defend had been dismissed for non-prosecution, the impugned Judgment and Decree ought to be set aside and the matter remanded to the learned Banking Court for adjudication afresh.

10. The record further shows that the Respondent-Bank instituted the recovery suit in October 2009. On 14.09.2010, Mr. Rafique Kalwar, learned Advocate, filed his power on behalf of the appellants/defendants along with an application under Section 10 of the Ordinance seeking leave to defend. An order was passed thereon and the matter was adjourned. The application thereafter remained pending for a considerable period. The diary sheets of the learned Banking Court are particularly material for determining whether the appellants were denied a fair and reasonable opportunity to prosecute their application for leave to defend.

11. The proceedings reveal that, following the filing of the application for leave to defend, the matter was adjourned on several dates. On 23.01.2010, learned counsel for the plaintiff was absent, whereas the Bank Manager was present, received a copy of the application for leave to defend, and the matter was adjourned for filing of replication. On 01.02.2010, both learned counsel were absent and the matter was adjourned for replication. On 13.02.2010, once again, neither side was represented and the matter was adjourned. On 24.02.2010, both

learned counsel remained absent and the matter was again adjourned. On 06.03.2010, both sides were absent and the matter was adjourned. On 15.03.2010, both learned counsel were again absent and the matter was adjourned. On 06.04.2010, both sides remained absent and the matter was again adjourned. On 19.04.2010, both learned counsel were absent and the matter was adjourned. Likewise, on 30.04.2010, both sides remained absent and the matter was again adjourned.

12. Thereafter, on 18.05.2010, learned counsel for the plaintiff appeared and filed his power, whereas no one appeared on behalf of the defendants, and the matter was once again adjourned for replication. On 04.06.2010, learned counsel for the plaintiff was present and an adjournment was granted, whereas the defendants remained absent. On 08.06.2010, the plaintiff was represented and filed its replication, whereafter the matter was specifically fixed for hearing of the application for leave to defend on 16.06.2010. On 16.06.2010, learned counsel for the plaintiff was present; however, despite repeated calls, no one appeared on behalf of the defendants. Consequently, the learned Banking Court dismissed the application for leave to defend for non-prosecution and directed the plaintiff to produce the original documents.

13. The subsequent proceedings demonstrate that the appellants were not left without a remedy against the dismissal of their application for leave to defend. They thereafter filed an application under Section 151 CPC seeking restoration of the said application. The matter remained pending before the learned Banking Court; however, the appellants ultimately failed to secure restoration. As recorded in the impugned Judgment, the restoration application was dismissed on 27.09.2011. Thus, the appellants not only failed to appear on the date specifically fixed for hearing of their application for leave to defend, but also failed in their subsequent attempt to have the said application restored.

14. The foregoing chronology cannot be considered merely as a series of isolated dates. It demonstrates that the matter remained

pending on numerous occasions and that repeated opportunities were available to the appellants to pursue the statutory remedy available to them. The record does not disclose that the appellants were prevented from appearing or otherwise denied an opportunity of hearing. Rather, the proceedings indicate repeated non-appearance on behalf of the parties, followed by a specific date being fixed for hearing of the application for leave to defend after filing of the Respondent-Bank's replication.

15. The Court is undoubtedly required to act fairly, patiently and judiciously; however, judicial indulgence cannot be permitted to become indefinite. A Court of law must, while ensuring fairness to litigants, also exercise its lawful authority to regulate its proceedings and secure their expeditious conclusion. The effectiveness of the administration of justice depends upon the efficacy of judicial orders and upon the willingness of the Court to enforce the consequences prescribed by law when a litigant fails to avail an opportunity duly afforded to him. A Court cannot be rendered powerless by repeated defaults or by the continued seeking of indulgence after sufficient opportunities have already been granted.

16. The expeditious disposal of cases is an essential component of the rule of law. Protracted litigation not only burdens the judicial system but also undermines public confidence in the administration of justice. While the right of a litigant to a fair hearing is fundamental, such right cannot be divorced from the corresponding obligation of the litigant to remain vigilant and to diligently prosecute the proceedings. The Court must, therefore, maintain a proper balance between affording a meaningful opportunity of hearing and ensuring that its process is not abused so as to perpetuate delay.

17. Orders passed by a Court of law must possess efficacy and cannot be rendered nugatory by repeatedly accommodating a party that has failed to act with the requisite diligence. Repeated adjournments and continued indulgence, particularly where adequate opportunities have already been afforded, defeat the very purpose of expeditious adjudication. Procedural law is

intended not merely to secure a fair opportunity to the litigants but also to ensure that litigation proceeds in an orderly manner and ultimately reaches its conclusion within a reasonable period. Once a Court has afforded sufficient opportunity and a party, despite such opportunity, fails to avail the same, the Court is competent to give effect to the consequences flowing from such default. In the present case, the appellants having failed to secure restoration of their application for leave to defend cannot, as a matter of right, demand that the same opportunity be afforded afresh at the appellate stage.

18. It is, therefore, not a case in which the application for leave to defend was dismissed without affording the appellants a reasonable opportunity of being heard. On the contrary, the record demonstrates that the application remained pending through a number of dates, and after the Respondent-Bank filed its replication on 08.06.2010, the matter was specifically fixed for hearing of the application on 16.06.2010. Despite such specific opportunity, none appeared on behalf of the defendants when the matter was called. The learned Banking Court consequently proceeded in accordance with law and dismissed the application for leave to defend for non-prosecution.

19. Even thereafter, the appellants invoked the inherent jurisdiction of the Court under Section 151 CPC and sought restoration of their application. That remedy was pursued before the learned Banking Court but ultimately did not succeed, the restoration application having been dismissed on 27.09.2011. In these circumstances, the appellants cannot legitimately contend that they were denied an opportunity to pursue their statutory remedy or that the learned Banking Court acted with undue haste in proceeding with the suit.

20. The well-recognized principle that litigation should, as far as possible, be adjudicated on merits cannot be construed to mean that a litigant may remain absent at a material stage of the proceedings and thereafter claim repeated indulgence as an indefeasible right. The right to a hearing carries with it a corresponding duty to remain vigilant and to diligently pursue

the remedy invoked before the Court. Once reasonable and sufficient opportunities have been afforded, the Court is entitled, and in appropriate circumstances obliged, to enforce the consequences arising from the failure to avail such opportunities. Any contrary approach would permit proceedings to remain perpetually open and would seriously impair the authority and efficacy of judicial orders.

21. In the circumstances of the present case, this Court cannot accept that the appellants were deprived of a reasonable opportunity to contest the proceedings. They had filed an application for leave to defend, the same remained pending on several dates, and a specific date was ultimately fixed for its hearing. The appellants, however, failed to appear on the date fixed and the application was consequently dismissed for non-prosecution. They thereafter availed the remedy of seeking restoration under Section 151 CPC, but failed to obtain an order restoring the application.

22. Having failed to avail the opportunities available to them and having failed even in their subsequent attempt to secure restoration, the appellants cannot now seek to reopen the matter at the appellate stage merely by relying upon the factual assertions contained in the application for leave to defend. To permit such a course would effectively nullify the orders passed by the learned Banking Court, encourage disregard of procedural timelines and prolong the litigation without sufficient legal justification. The appellants, therefore, have failed to demonstrate any denial of fair opportunity or any procedural illegality warranting interference with the impugned Judgment and Decree on this ground.

23. The record further reflects that the appellants had instituted Suit No.69 of 2008 in August 2008 against the Respondent-Bank before the learned Banking Court, seeking, inter alia, declaration, rendition of accounts, mandatory injunction and damages, on substantially the same grounds and contentions as subsequently raised in the present proceedings. The appellants, however, failed to diligently prosecute the said

suit. Learned counsel for the appellants submitted that the said suit was also dismissed; however, he was unable to apprise the Court of the precise grounds or circumstances in which the suit came to be dismissed. It is, nevertheless, an admitted position that the order passed by the learned Banking Court in the said proceedings was not assailed before the competent appellate forum and, consequently, attained finality. The appellants, therefore, cannot now seek to rely upon the same controversy as a ground for reopening the issues which had already been agitated by them in the earlier proceedings.

24. Adverting to the merits of the controversy, the appellants have principally relied upon the alleged removal of the pledged stock from their godown on 24.07.2008, which, according to them, was prior to the date fixed for adjustment of the finance facility. It is contended that the Respondent-Bank failed to account for the pledged goods or the proceeds thereof and that no notice regarding any shortage, removal or disposal of the pledged stock was served upon the appellants. According to learned counsel, these assertions give rise to substantial questions of fact which could only properly be determined after recording evidence.

25. There is, however, no dispute that the appellants had availed the finance facility from the respondent-Bank and that the said facility was secured by pledge of stock and other securities. Indeed, the application for leave to defend itself acknowledges the grant of the finance facility and the securities furnished in favour of the Respondent-Bank. The dispute raised by the appellants is principally confined to the pledged stock and the alleged manner in which the same was dealt with by the Respondent-Bank. Mere assertion of such allegations, however, does not, by itself, establish that the amount claimed by the Respondent-Bank was either paid, adjusted or otherwise discharged, nor does it, without supporting material, dislodge the outstanding balance reflected in the statement of account.

26. On the other hand, the respondent-Bank produced before the learned Banking Court the relevant finance and security

documents, including the loan application, agreement for finance, demand promissory note, letter of pledge, memorandum of deposit of title deeds, letters of guarantee, mortgage deed, general power of attorney and certified statement of account. The original documents were also produced and perused by the learned Banking Court. The statement of account reflected total debits of Rs.11,391,302/- and credits of Rs.2,391,302/-, thereby leaving a balance of Rs.90,00,000/- outstanding. Upon examination of the material placed before it, the learned Banking Court found the said amount to be recoverable from the appellants.

27. The appellants have not placed before us any material establishing that the outstanding amount of Rs.90,00,000/- was in fact paid, adjusted or otherwise discharged. Their principal defence rests upon the alleged removal of the pledged stock and the assertion that the Respondent-Bank failed to account for the same. Even if these allegations are taken into consideration, they do not, in the absence of supporting material establishing the value of the stock, its disposal and the proceeds realized therefrom, demonstrate that the finance facility stood discharged or that the amount reflected as outstanding in the Respondent-Bank's account ceased to be payable.

28. The contention regarding the date of adjustment also does not, by itself, establish discharge of the outstanding liability. The appellants assert that the finance facility was to be adjusted by 31.07.2008, whereas the material available on record refers to a different date. Be that as it may, the material question before the learned Banking Court was whether the amount claimed in the suit remained outstanding and payable. The appellants, having failed to secure leave to defend, could not, thereafter, require the learned Banking Court to undertake a full-fledged trial in respect of disputed assertions which had not been established through evidence.

29. Likewise, the allegation that officials of the respondent-Bank removed the pledged goods on 24.07.2008 does not, without proof as to the quantity and value of the goods allegedly

removed, their subsequent disposal, the amount realized therefrom and its appropriation towards the outstanding finance facility, establish that the liability claimed in the suit stood satisfied, either wholly or partly. These were matters which, had leave to defend been granted, could have been examined in accordance with law upon the parties producing appropriate evidence. The allegations contained in an application for leave to defend, however, cannot themselves be treated as proof of the facts asserted therein.

30. We have also considered the contention of learned counsel for the appellants that they ought to have been afforded an opportunity to establish the aforesaid matters through evidence. The difficulty with this contention is that such opportunity was conditional upon the appellants diligently prosecuting their statutory application for leave to defend. The said application was dismissed for non-prosecution, and the subsequent application seeking its restoration was also unsuccessful. Consequently, the factual assertions contained in the dismissed application cannot, at this stage, be treated as an established defence so as to render the decree liable to be set aside.

31. The material placed before the learned Banking Court cannot, therefore, be characterized as being devoid of substance. The Respondent-Bank produced the original finance and security documents as well as the statement of account, which were examined by the learned Banking Court before passing the decree. Significantly, the learned Banking Court did not mechanically accept the entire claim of the Respondent-Bank. The claim for liquidated damages was specifically declined, while the decree was confined to the amount found payable, together with costs and cost of funds. This aspect of the matter lends further support to the conclusion that the claim was examined on the basis of the material available before the learned Banking Court rather than being decreed mechanically in its entirety.

32. The question before us, therefore, is not merely whether the appellants could have raised a dispute concerning the pledged stock. The material question is whether, in the circumstances of

the present case, such dispute furnishes a lawful basis for setting aside the decree after the appellants failed to obtain leave to defend and subsequently failed to secure restoration of the said application. We are unable to find any such basis. The appellants were required to avail the statutory opportunity available to them in accordance with law and to diligently prosecute the same. Having failed to do so, the allegations contained in the dismissed application for leave to defend cannot, by themselves, revive a right of defence which was lost upon dismissal of the application and the failure of the subsequent restoration proceedings.

33. It is necessary in this context to maintain a proper balance between the right of a litigant to a fair opportunity of hearing and the equally important requirement that litigation should proceed towards its lawful and expeditious conclusion. A Court of law cannot remain powerless in the face of repeated defaults by a litigant who, despite adequate opportunities, fails to diligently prosecute the proceedings. Judicial proceedings cannot be permitted to remain indefinitely at the mercy of a party's inaction. The authority of the Court must be exercised to ensure that its proceedings retain efficacy and that the process of law is not frustrated by repeated defaults or unnecessary delay. In the present case, the diary sheets demonstrate that opportunities were available to the appellants, while the material produced by the Respondent-Bank establishes the evidentiary basis upon which the recovery claim was decreed.

34. The cumulative effect of the foregoing circumstances does not persuade us that the appellants were denied a reasonable opportunity of hearing or that the learned Banking Court acted arbitrarily or mechanically in proceeding with the matter. The appellants failed to prosecute their application for leave to defend on the date specifically fixed for its hearing and thereafter failed to secure restoration of the said application. Such conduct necessarily carries procedural consequences which cannot be disregarded merely because the appellants now seek to rely upon the factual assertions contained in the dismissed application. At

the same time, the Respondent-Bank had placed before the learned Banking Court the original finance and security documents and the statement of account, furnishing a substantive basis for the decree passed in its favour.

35. The judgments relied upon by learned counsel for the appellants have been examined. The facts and circumstances obtaining in those cases are materially distinguishable from those prevailing in the present matter. The said authorities, therefore, do not advance the case of the appellants nor do they establish any proposition which would render the impugned Judgment and Decree susceptible to appellate interference in the circumstances before us.

36. In view of the foregoing discussion, we find no illegality, material irregularity, misreading or non-reading of any material piece of evidence, or perversity in the impugned Judgment and Decree warranting interference by this Court in its appellate jurisdiction. The appellants have failed to demonstrate that the learned Banking Court acted contrary to law or that the decree was passed without due consideration of the material placed before it. The procedural history of the proceedings, the conduct of the appellants in pursuing their application for leave to defend, and the material supporting the Respondent-Bank's claim, when considered cumulatively, do not warrant any further indulgence.

37. Consequently, the instant Banking Appeal is **dismissed**. The Judgment and Decree dated 06.10.2011 passed by the learned Judge, Banking Court-I, Hyderabad, in Suit No.80 of 2009 are hereby **maintained**. There shall be no order as to costs.

JUDGE

JUDGE