IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Misc: Appeal No.S-14 of 2023
Civil Misc: Appeal No.S-15 of 2023
Civil Misc: Appeal No.S-16 of 2023
Civil Misc: Appeal No.S-17 of 2023
Civil Misc: Appeal No.S-18 of 2023
Civil Misc: Appeal No.S-19 of 2023

Date	Order with signature of Judge

1. For orders on office objections.
2. For orders on CMA No.128/2024
3. For hearing of main case.

14.09.2026

Mr. Fareed Ahmed Soomro, Advocate for Appellant.

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O R D E R

Due to commonality, all these Appeals are decided by this single Order.

2. Despite date and time fixed matter, the Respondents are not appearing, although on pervious date sought adjournment for engaging a Counsel.

3. The common facts are that Appellant filed different Summary Suits in the Court of learned IInd Additional District Judge, Khairpur for recovery of outstanding liabilities from the private Respondents who were extended the Agricultural Loan Facility, against execution of documents including Demand Promissory Note(s), Mortgage Agreement(s) and creation of charge (available on record). The impugned Order has returned the plaint on the ground that the Trial Court is *corum-non-judice* in view of Section 28 of the Microfinance Institutions Ordinance, 2001**(MFIO)**, which provision is reproduced in the impugned Orders.

4. Section 28 of the MFIO has been invoked without examining the nature and scope of the provision itself. The question before the

learned Trial Court was one concerning the maintainability and forum of a civil action for recovery of the amount advanced under a Microfinance transaction, whereas Section 28 operates in the field of criminal cognizance of offences under the MFIO. The two jurisdictions are distinct and cannot be treated as interchangeable. The impugned Orders, therefore, suffer from a fundamental misreading of the statutory provision.

5. The legal position regarding the availability of civil/summary jurisdiction to a Microfinance Institution has subsequently been authoritatively considered by the Hon'ble Supreme Court in **Telenor Microfinance Bank Limited v. Shamim Bano and others, [2023 SCMR 1560]**. In that case also, the Microfinance Bank had instituted Summary Suits under Order XXXVII, C.P.C. for recovery of loans. The High Court had directed the Bank to institute ordinary civil suits in the plenary jurisdiction instead of proceeding under the summary chapter. The Hon'ble Supreme Court set aside that approach. It noticed that Section 3(2) of the MFIO excludes the application of laws relating to Banking Companies or Financial Institutions to Microfinance Institutions, save as otherwise provided by the MFIO. The Supreme Court consequently held that requiring the Microfinance Institution to institute recovery proceedings before the Banking Court was not a correct exposition of law.

6. The Hon'ble Supreme Court further examined the applicability of Order XXXVII, C.P.C. and observed that the summary procedure is available in respect of suits founded upon bills of exchange, hundies or promissory notes. The Court also examined Sections 4 and 13 of the Negotiable Instruments Act, 1881 and found that the promissory notes forming part of the finance agreements satisfied the requirements of a negotiable instrument.

7. The aforesaid principle is also earlier illuminated by the Judgment of the Hon'ble Supreme Court in **Haji Ali Khan & Company, Abbottabad and others v. M/s Allied Bank of Pakistan Limited, [PLD 1995 SC 362]**. While that case arose under the then applicable Banking Companies (Recovery of Loans) Ordinance, 1979, the Hon'ble Supreme Court explained the character and object of the summary procedure under Order XXXVII, C.P.C. The Court emphasized that the summary procedure is intended to prevent unreasonable obstruction by a defendant who has no good defence and that Rules 2 and 3 of Order XXXVII are to be read together.

8. The same judgment further makes clear that where leave to defend is refused, the consequences prescribed by Order XXXVII follow, but this does not dispense with the Court's obligation to apply its judicial mind to the facts and documents before it.

9. This principle assumes particular significance in the present matter because the learned Trial Court, instead of examining the documents including the Demand Promissory Notes, forming the basis of the Summary Suits and determining their legal effect, returned the plaints on the basis of an erroneous interpretation of Section 28 of the MFIO. Thus, the impugned Orders cannot be sustained, because the plaints could not lawfully have been returned merely on the basis of Section 28 of the MFIO.

10. In view of the foregoing, the impugned Orders are **set aside**. The Summary Suits are restored to their original status before the learned Trial Court.

11. The Respondents shall be afforded an opportunity, in accordance with Order XXXVII, C.P.C., to take the steps available to them in law; including seeking leave to defend, if otherwise permissible. The learned Trial Court shall proceed with the matters

strictly in accordance with the procedure prescribed by law and shall decide the suits expeditiously, preferably within four (04) months from receipt of this Order, keeping in view that the Summary Suits were instituted in the year 2023.

12. The Appeals are accordingly allowed in the above terms.

J U D G E

S.Nawaz(St)'