

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. B-39 / 2016

DATE

ORDER WITH SIGNATURE OF JUDGE

Plaintiff: M/s Bita Textile Mills Pvt. Ltd & others
through Mr. Muhammad Arif Advocate

Defendant: M/s First Women Bank Ltd. through Mr.
S. M. Kazim along with Mr. Adnan Ahmed Malik
Advocates.
Ms. Farzana Aftab Branch Manager.

- 1) For hearing of CMA No. 14815/2016.
- 2) For hearing of CMA No. 18180/2017.

Date of hearing: 15.02.2018.
Date of Order: 09.03.2018.

ORDER

1 & 2) This is a Suit filed by the Plaintiff against Bank for Declaration(s), Permanent Injunction, Rendition of Accounts, Redemption / Relapse of Mortgage properties, Recovery of Damages. The Defendant Bank has filed its Leave to Defend application which is fixed at serial No. 2.

Learned Counsel for Defendant has contended that instant Suit is not maintainable as the same has been filed by an incompetent person in clear violation of Order 29 Rule 1 CPC. In support he has relied upon ***Messrs Malik Israr Salim & Brothers through Proprietor V. Allied Bank of Pakistan Ltd. and 2 others (2006 CLD 85)***. He has further contended that the Plaintiff is a defaulter and has filed instant Suit just to pressurize the Defendant Bank so that the recovery Suit which has been filed against them is not proceeded expeditiously. Per learned Counsel since the Suit is incompetent the same be dismissed.

On the other hand, Learned Counsel for the Plaintiff has at the very outset conceded to the fact that if Leave to Defend is granted to the Plaintiffs in Suit No. B-41/2016 filed by the Bank then the Plaintiffs in this Suit have no objection for the grant of unconditional Leave to Defend.

I have heard both the learned Counsel and perused the record. At the very outset, I may observe that it is only the Leave to Defend application which is before this Court and not an application for rejection of the plaint as in my view the arguments which have been made by the learned Counsel for the Defendant are contrary to what has been stated or for that matter can be granted on an application under Section 10 under FIO 2001. Insofar as the maintainability of the Suit is concerned, on perusal it appears that a proper board resolution passed by the Directors of the Plaintiff Company is on record and in my view substantial compliance has been made, whereas, at the most this question / objection can be taken up as an issue. This is a Suit wherein, there are several prayers of the Plaintiff including a claim of damages which in my view cannot be adjudicated until and unless a Leave to Defend is granted to the Defendant. Insofar as the conditional concession of the learned Counsel for the plaintiff is concerned, I may observe that the same is misconceived and not justified in that the Suits and the leave to defend applications in counter Suits of the Financial Institution and a Customer are to be heard and adjudicated independently and even if leave is granted in one, it is not necessary that as a corollary, the leave in another must be granted as a rule. Mere filing of a Suit by a customer, conversely does not entitle it for grant of leave to defend in the Suit of a Financial Institution. If any authority is needed one may place reliance on the case of ***National Bank of Pakistan v Raja Traders*** 2016 CLD 1938.

In view of such position, the application at serial No. 2 is allowed by granting unconditional Leave to defend to the Defendant and the contents of this application are treated as written statement. Both the learned Counsel are directed to file proposed issues on the next date.

Insofar as the application listed at serial No. 1 is concerned, in view of the order passed in the connected Suit bearing No. B-41/2016, whereby, the leave to defend is dismissed and the Suit stands decreed, the same is hereby dismissed.

Dated: 09.03.2018

J U D G E

ARSHAD/