IN THE HIGH COURT OF SINDH AT KARACHI

First Appeal 112 of 2016

Present: **Muhammad Ali Mazhar** and **Agha Faisal**, **JJ**.

Sohail Haider
vs.
M.C.B. Bank Limited

For the Appellant: Mr. Afaq Yousuf, Advocate

For the Respondents: Mr. Wasi Haider, Advocate

Date of Hearing: 05.03.2019

Date of Announcement: 05.03.2019

JUDGMENT

Agha Faisal, **J**: The present appeal is filed against the judgment dated 08.09.2016 ("**Impugned Judgment**") rendered by the learned Banking Court II, Karachi in Suit 34 of 2013 ("**Suit**") and the decree dated 20.09.2016 ("**Decree**") made in pursuance thereof.

2. Mr. Afaq Yousuf advocated the case for the appellant, against whom the Suit had been decreed vide the Impugned Judgment and Decree, and submitted that while there was no dispute as to the availing / default of the finance facility, the Impugned Judgment was delivered without jurisdiction as the relationship between the parties was not encompassed by the Financial Institutions (Recovery of Finance) Ordinance, 2001 ("**Ordinance**"). Learned counsel submitted that the appellant obtained employment with the respondent bank and in pursuance thereof had availed a finance facility from his employer. Learned counsel submitted that it was always contemplated that the repayment shall take place from the salary being paid to the appellant

and the respondent's act of terminating the appellant's employment is the primary reason that the amount availed could not be repaid. It was further contended that a suit for damages had already been preferred by the appellant against the respondent. Therefore, it was argued that the respondent bank was responsible for the non-payment of the amounts due thereto. Learned counsel thus prayed that the present appeal may be allowed, the Impugned Judgment set aside and the respondent bank be directed to institute a recovery suit in a court of plenary jurisdiction to recover the outstanding amounts from the appellant.

3. Mr. Wasi Haider, Advocate represented the respondent bank and controverted the arguments advanced on behalf of the appellant. It was submitted that while the appellant was an employee of respondent at the time that the finance facility was granted to him the relationship inter se with respect to the facility advanced was that of customer and financial institution, as defined under the Ordinance. Learned counsel referred to the definition section contained in the Ordinance and demonstrated that the parties and the transaction inter se fall within the purview thereof. Per learned counsel the termination of the appellant from the employment of the respondent does not change the nature of the customer / financial institution relationship and the appellant cannot be absolved of his legal obligations while taking cover of such arguments. In conclusion it was submitted that the present appeal was without merit and hence liable to be dismissed.

4. We have heard arguments of the respective learned counsel and have also considered the record arrayed before us. It is manifest that the availing of the facility, quantum thereof and the remaining outstanding in such regard are not disputed in the case before us. The

primary point for determination is whether the learned Banking Court was the appropriate forum for adjudication of the dispute between the parties.

5. We have perused the R&P of the Suit and have observed from the finance and security documentation contained therein that the appellant has been defined and described as a customer in the financing agreement, execution whereof is not denied by the appellant. A bare perusal of the definition section of the Ordinance, reproduction whereof is eschewed herein for the sake of brevity, demonstrates that the appellant falls squarely within the definition of customer and that the mere fact that the appellant was employed by the respondent does not exclude the appellant from the said definition; the respondent is admittedly a financial institution; the loan transaction qualifies as finance; and further that the transactional documents clearly demarcate the relationship *inter se* to fall within the definition of obligation, hence, conferring exclusive jurisdiction upon the learned banking Court to adjudicate the matter. It is thus the considered view of this Court that simply because the appellant was an employee of the respondent bank at the time that the finance facility was availed the nature of the relationship does not change.

6. We have considered the offer letter of employment dated 11th April, 2007, available in the R&P file of the Suit, and a perusal thereof demonstrates that the extension of any finance facility is not a right or privilege contained therein. It is thus manifest that the finance relationship is a stand-alone transaction, independent of the terms of employment between the parties. We do not concur with the argument that the respondent is a contributor to the default, as termination of

employment precluded the appellant from repaying the finance facility, as the said contention is not sustainable in law.

7. In view of the reasoning herein contained, it is established that the learned Banking Court did have the jurisdiction to adjudicate the lis. The Impugned Judgment and Decree had only been assailed on the aforesaid two grounds which have not been sustained by us. The findings of the learned Banking Court on merit were not the subject matter of the present appeal. Therefore, we found that the present appeal to be devoid of merit, hence, the same was dismissed, along with pending applications, vide our short order dated 05.03.2019. These are the reasons for our aforesaid short order.

J U D G E

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Karachi.
Dated 08.03.2019.

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