

## IN THE HIGH COURT OF SINDH AT KARACHI

Spl. HCA No. 57 of 2018

Before : **Mr. Justice Irfan Saadat Khan**  
**Mr. Justice Fahim Ahmed Siddiqui**

First Pakistan Security, Ltd.  
 & others.

.....

Appellant

Versus

Bank Alfalah Limited.

.....

Respondents

Dates of hearing : **23.09.2019, 09.10.2019 & 22.10.2019**  
 Date of judgment : \_\_\_\_\_

Appellant First Pakistan Security, Ltd. Through Mr. Danish Ghazi, advocate.

Respondent Bank Alfalah Limited through Mr. Behzad Haider, advocate.

### J U D G M E N T

**FAHIM AHMED SIDDIQUI, J:-** This High Court Appeal is directed against the judgment dated 07.12.2017 and decree dated 27.01.2018, passed by the learned single Judge of this Court in Suit # B-30/2012 (Bank Alfalah Ltd v/s First Pakistan Securities Ltd and others). Through the impugned judgment, after the dismissal of the leave to defend application of the appellants (defendants of Suit), the Suit of the respondent (plaintiff bank) was decreed for an amount of Rs.149,702,549.67 as the principal amount of running finance and Rs.2,935,829.13 under mark-up up to 31-12-2008 and thereafter cost of fund from the date of default till its realization.

2. Ephemeraly, the facts of the case are that the appellant No. 1 is a corporate body and doing a business of brokerage house at the stock exchange. The appellant No. 1 availed the running finance facility from the respondent bank under a finance agreement executed between the parties, while the appellants Nos. 2 to 9 are guarantors. The respondent bank filed a Suit under Section 9 of the Financial Institution (Recovery of Finance) Ordinance 2001 (hereinafter called as 'the Ordinance'). The appellants filed an application for leave to defend the said Suit but the same was dismissed by the learned single Judge and ultimately the impugned judgment was passed and the Suit was decreed as mentioned above.

3. Mr. Danish Ghazi, learned counsel for the appellants prefers his submissions at length. He opens his arguments by submitting that the case of appellants rests on the novation of contract. According to him, after the initial financing agreement dated 26-08-2008, another agreement was technically executed on subsequent date i.e. 08-02-2010. According to him, the said agreement is a novation of earlier agreement, as such the cut-off date will be from the new agreement, hence the Suit was prematurely filed and at the time of filing the Suit, cause of action was not accrued. He submits that since the appellants have objected upon some of the terms of the second proposal/agreement through a letter due to which the respondent bank has chosen to recourse to the previous agreement, which was not correct as the objection was yet not responded. According to him, unless recalled, the subsequent offer/agreement remained intact irrespective of the fact that the objections of the appellants were incorporated or not. In support of his contentions regarding novation of contract, he relied upon the cases reported as **National Bank of Pakistan vs. Al-Asif Sugar Mills Ltd. (2001 MLD 1317)**, **Banque Indosuez vs. Banking Tribunal for Sindh and Baluchistan (1994 CLC**

**2272) and Lahore Cantonment Cooperative Housing Society Ltd vs Dr. Nusratullah Chaudhri (PLD 2002 Supreme Court 1068).**

4. Mr. Behzad Haider, learned counsel for the respondent, opens his arguments by raising the plea of limitation for filing the instant appeal. According to him, the limitation should be calculated from the date of judgment in banking matters and not from the date of the decree. He submits that the appellants have not to wait for the preparation of decree and as soon as the judgment was pronounced, the limitation starts running. After referring Section 22 (1) of the Ordinance, he submits that the language of the law is very much clear, which says that the appeal should be filed within 30 days after judgment or decree. He submits that the impugned judgment was passed on 07-12-2017, while the appeal was presented on 01-03-2018 and even if the period in copying branch was deleted, the appeal is time-barred. Regarding this point, he relied upon the cases reported as **Apollo Textile Mills Ltd and another vs. Soneri Bank Ltd (PLD 2012 Supreme Court 268)** and **Imtiaz Ali vs. Atta Muhammad and another ( PLD 2008 Supreme Court 462).**

5. Regarding merits, the learned counsel for the respondent contends that there is no novation of contract and only a rescheduling was offered with certain terms and conditions but the same was rejected as such no question of novation arises. He submits that after rejection by the appellants, it was not necessary to respond and as the offer was not accepted; therefore, no fresh agreement was said to be executed. He submits that the Suit was properly filed at the time when the cause of action was actually accrued.

6. In rebuttal, the learned counsel for the appellants submits that the time for limitation will start from the date of decree and in the present case the decree was prepared on 27-01-2018 and if the time consumed in getting copies if deleted, the appeal is within time. He submits that **Imtiaz**

**case (supra)** pertains to an appeal before the Hon'ble Supreme Court as such the same is distinguishable.

7. We have heard the arguments advanced and have gone through the available record as well as the decisions relied upon by them.

8. According to para 71 of the leave to defend application, it is an admitted position that the appellants had fully availed the finance facility as per the finance agreement. However, the appellants contend that the financing facility was restructured vide agreement dated 26-06-2009. Nevertheless, if the parties agreed to restructure, the same could not be considered as martialized because of the communication of the appellant No. 1 under letter dated 13-08-2009, addressed to the respondent bank (Annexure P/38, page 573). From the said letter it is evident that the appellant No. 1 had some reservation on the offer of the respondent bank and he has suggested some amendments, which were contrary to the offer. Meaning that there was no agreement of the parties regarding the subsequent offer, as such the same cannot be considered as materialized. Since the respondent has not accepted the said offer, there is no novation of the contract. In such a situation, the parties are abided by the original finance agreement. Hence, it cannot be said that at the time of filing Suit, no cause of action has accrued in favour of the respondent bank against the appellant.

9. The other important aspect of the case pertains to the limitation of filing of the instant appeal. According to the appellants, the appeal was filed within time, if it is calculated from the date of the decree. Per contra, the appellants do not require to wait for the decree, as the appeal was filed not under Section 96 of CPC but under Section 22 of the Ordinance, which enables the appellants to file an appeal against a judgment or a decree. We have minutely examined this aspect of the case. The text of Section 22(1) is very clear, which requires that any person aggrieved

by any judgment, decree, sentence, or final order passed by a Banking Court may, within thirty (30) days of such judgment, decree, sentence or final order prefer an appeal to the High Court. In Section 22(1), the conjunction 'OR' indicates that the appeal can be filed either against a judgment or a decree. Since, it is the provision of law that the appeal can be filed against any final order including judgment or decree, hence the period of limitation will start from the date of judgment and not from the decree. In the case of **Apollo Textile Mills (supra)**, the Hon'ble Supreme Court, while deliberating upon the same issue, has observed as under:

*"In the case of 'Imtiaz Ali v. Atta Muhammad and another' (PLD 2008 SC 462) read with the case of 'Nakuleswar Sikdar v. Barun Chandra Chakravorty and another' (1971 SCMR 54), it was held that where appeal was allowed against the judgment or decree or a final order, filing of appeal within limitation was mandatory 'from the delivery of judgment and waiting for the grant of certified copy of the decree' would not enlarge the limitation and in such a case non-filing of the decree would not be fatal to the appeal."*

10. It is now clear that an appeal under Section 22 of the Ordinance was to be filed within thirty (30) days of the announcement of judgment. In the present case, judgment was pronounced on 07-12-2017; therefore, the limitation started running from that date irrespective of the fact that the decree was prepared on a subsequent date i.e. 27-01-2018. The appellants had applied for certified copies on 19-01-2018. The fee for certified copies was deposited on 01-02-2018 and the copies were ready for delivery on 06-02-2018 and the same were received by the appellants on 07-02-2018. From the above facts, it is clear that the appellants have applied for certified copies after 42 days of the announcement of the judgment, while the copies were collected by the appellants after 22 days of their application for the certified copies, meaning thereby that the appeal was already time-barred when the application for certified copies was presented. What is more! The appeal was presented on 01-03-2018 i.e. after about 84 days and if the period of winter holidays is deducted,

even then the appeal is hopelessly time-barred. The outcome of the entire discussion is that the present appeal does not survive on the ground of merits as well as the same suffers from latches, as such the same is dismissed with no order as to cost.

JUDGE

JUDGE