

Judgment Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1st Appeal No. D – 33 of 2017

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Appellant: Jibrael Ameen, through
Mr. Sajjad Muhammad Zangejo,
Advocate.

Respondent: M/s Zarai Tarqati Bank Limited, through
Mr. Faheem Majeed Memon, Associate
of Mr. Fayyaz Ahmed A. Soomro,
Advocate.

Date of hearing: **12-10-2021**

Date of judgment: **12-10-2021**

J U D G M E N T

Muhammad Junaid Ghaffar, J. – This Appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (“**Ordinance**”) has been filed against judgment and decree dated 31-10-2017 and 03-11-2017, respectively, passed by the learned Judge of Banking Court-I, Sukkur in Suit No.135 of 2016, whereby the Suit has been decreed.

2. Learned Counsel for the Appellant submits that the learned Banking Court while dismissing the leave to defend application and decreeing the Suit of the Respondent has erred in law; that legal objections including competency of the Suit as well as limitation and the fact that relationship had been denied was not considered; that pass book is not a title document; hence, no finance facility could have been granted; that the impugned order has seriously prejudiced the Appellant as on the basis of grounds raised in the leave to defend application, a case for trial was made out, and resultantly, the Appellant has been denied a valuable right. He has prayed for setting aside the impugned judgment and remanding the matter to the Banking Court. In support, he has relied upon the case reported as

Hamayun v. Zarai Taraqati Bank Limited through Manager (2007 CLD 521).

3. On the other hand, Respondent's Counsel has disputed this argument that there was no relationship and in support he has referred to the memo of Appeal and submits that it has been admitted that loan was obtained. In support, he has relied upon the cases reported as *S.M.E., Leasing Limited v. Messrs Umar Knitting and 2 others (2011 CLD 1144)*, *Silkbank Limited v. Messrs Dewan Sugar Mills Limited (2011 CLD 436)*, *Kasb Bank Limited v. Mirza Ghulam Mujtaba and 2 others (2011 CLD 461)*, *Equity Participation Fund v. Messrs Abrasive Products Co. Limited and 4 others (2012 CLD 971)*, *Messrs Shahi Textiles and 4 others v. Habib Bank Limited through President (2012 CLD 506)* and *Ghulam Hassan v. Jamshaid Ali and others (2001 SCMR 1001)* as well as Act XLII of 1973 Loans for Agricultural Purposes Act, 1973.

4. We have heard both the learned Counsel and perused the record.

5. Insofar as denial of relationship with the Respondent is concerned, learned Counsel for the Appellant has vehemently argued that no relationship existed and there was no admission to this effect. The memo of Appeal at Page-4 under the head of 'Parawise Comments' clearly states that the Appellant had applied for loan, but heavy bribe was charged by the Bank officials, and therefore, he only got 50% of the total loan amount, hence, the Suit filed by the Bank for recovery is illegal and liable to be dismissed. While confronted, Counsel for the Appellant submits that this is a typographical error and the same was not stated in the leave to defend application. On perusal of the record including the leave to defend application, this appears to be correct, as such statement was not made in the leave to defend application. However, on perusal of the R&Ps of the Suit file, it transpires that all documents in respect of availing the finance facility are on record including pass book and application for obtaining loan as well as creating a charge on the property in question. Again while confronted, Counsel was not in a position as to how the property got mortgaged if the Appellant was not even a customer of the Bank. He has failed to give any cogent or satisfactory response to this observation of the Court. Moreover, if that be the case, then the Appellant ought to have sought some independent remedy against fraud allegedly committed with him and in respect of alleged illegal mortgage of the property. This has not

been done, whereas, in the leave to defend application, nothing has been mentioned as to any other remedy being availed. Moreover, the statement of account showing disbursement and partial repayment is also on record. As to the argument that pass book is not a title document so as to grant any finance facility, it may be observed that this assumption is incorrect in view of section 3(c)¹ and 4(5)² of the Loans for Agricultural Purposes Act, 1973. Lastly, we have confronted the Appellant's Counsel that as to what defence was taken by the Appellant before the Banking Court, and in support, he has referred to the leave to defend application. On perusal of the same as well as the R&P of the Suit file it depicts that the same was filed without any supporting document; hence, even otherwise, no convincing ground is made out to interfere with the impugned judgment. Mere denial without recourse to any other action regarding alleged fraud in creating a charge / mortgage on the property on the part of the Appellant does not suffice and therefore, no case is made out; hence, the Appeal being meritless fails and stands **dismissed**.

J U D G E

J U D G E

Abdul Basit

¹ "land owner" has the same meaning as in the West Pakistan Land Revenue Act, 1967 (W.P.Act,XVII of 1967), but does not include a lessee or a mortgage;

² The pass book shall be deemed to be a title deed and accepted as such by the bank for granting a loan or advance to a land-owner on the security of such land entered therein as he may indicate.