

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Before:

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

1st Civil Appeal No. D – 27 of 2018

Appellants: M/s Zarai Taraqati Bank Limited and others, through Mr. Faheem Majeed Memon, Advocate.

Respondent: Yaseen Dahri, through Mr. Ashok Kumar K. Jamba, Advocate.

1st Civil Appeal No. D – 28 of 2018

Appellants: M/s Zarai Taraqati Bank Limited and others, through Mr. Faheem Majeed Memon, Advocate.

Respondent: Anwar Ali Dahri, through Mr. Ashok Kumar K. Jamba, Advocate.

Date of hearing: **27-10-2021**

Date of judgment: **27-10-2021**

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Both listed Appeals filed under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (“**Ordinance 2001**”) involve a common issue and impugn identical judgment(s) and decree(s) dated 22-05-2018 and 23-05-2018, respectively, passed by the learned Judge of Banking Court-I, Sukkur in Suit No.46 of 2017 and Suit No.47 of 2017, whereby the Suit(s) of Respondent have been decreed.

2. Learned Counsel for the Appellants submits that this is a case of an admitted default; that the Banking Court was not justified in passing the impugned judgment(s) and decree(s); that since the outstanding amount of loan was not paid, therefore, the notice was correctly issued under Section 15 of the Ordinance 2001; that no limitation is applicable to an action under Section 15; that notwithstanding the fact that no suit(s) for recovery were

ever filed by the Appellants, the Suit(s) of the Respondent(s) were liable to be dismissed.

3. On the other hand, Respondent's Counsel has supported the impugned judgment(s) and has argued that since section 15 of the Ordinance, 2001, has been declared ultra vires by the Hon'ble Supreme Court in the case of National Bank¹, hence, no case is made out. He has prayed for dismissal of the Appeal(s).

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

5. It appears that the Respondent(s) filed Suit(s) for declaration and injunction being aggrieved of a notice issued under Section 15(2)² of the Ordinance 2001, wherein the leave to defend application was filed by the Appellants, but the same was dismissed and the Suit(s) were decreed. The precise reason for dismissal of the leave to defend and decreeing the Suit(s) was an admission of the Appellants that they had not filed any Suit(s) for recovery of the loan amount in terms of section 9 of the Ordinance, 2001. The decree was only to the extent of prayer clause (c) of the Plaint, which reads as under:

“To direct the defendants to return the original documents as well as pass book to the Plaintiff.”

6. While confronted, the Appellants' Counsel concedes that insofar as the recovery Suit(s) is concerned, no proceedings were initiated by the Bank and the matter has now become time barred. However, he has made an attempt to seek protection under Section 15 ibid for sale of property without intervention of the Court, on the ground that for such action there is no limitation.

7. On perusal of the record it appears that notice under Section 15 of the Ordinance, 2001, was issued by the Appellants to the legal heirs of the deceased borrowers and it was asserted that since mortgage means the transfer of interest in specific immoveable property for the purposes of

¹ National Bank of Pakistan and 17 others v. SAF Textile Mills Ltd. and another (PLD 2014 SC 283)

² **15. Sale of mortgaged property.** - (2) In case of default in payment by a customer, the financial institution may send a notice on the mortgagor demanding payment of the mortgage money outstanding within fourteen days from service of the notice, and failing payment of the amount within due date, it shall send a second notice of demand for payment of the amount within fourteen days. In case the customer on the due date given in the second notice sent, continues to default in payment, financial institution shall serve a final notice on the mortgager demanding the payment of the mortgage money outstanding within thirty days from service of the final notice on the customer.

securing payment of the mortgage money or the performance of an obligation which may give rise to a pecuniary liability; hence, the deceased father of the Plaintiffs and now his legal heirs are still borrowers and customers, as defined in the Ordinance 2001, and therefore, were liable to make payment, failing which the property would be sold without intervention of the Court. The Respondents then filed Suit(s) against the Appellants seeking various prayers out of which the prayer to the extent of return of documents has been decreed.

8. It appears to be an admitted position that the maximum limitation to file a Suit for recovery against a mortgage as provided under Article 132³ of the Limitation Act, 1908, is 12 years and the same stands expired. Even notice under Section 15 (*ibid*) was issued after expiry of the limitation. The question as raised during argument (though not pleaded before the Banking Court) is that section 15 *ibid* is an independent remedy for the Appellants, and can be invoked notwithstanding expiry of limitation for filing a recovery Suit under section 9 of the Ordinance, 2001. We do not agree. In our considered view, once the limitation has expired, recourse to Section 15 *ibid* would also be hit by the law of limitation, inasmuch as the same is an alternate course available to a Financial Institution to seek recovery of the loan amount in addition to a Suit under Section 9 of the Ordinance 2001. Though, a Financial Institution can take recourse to any of the two options for recovery of a defaulted loan; but on each, the law of limitation would apply. If the argument as advanced is accepted, then in every case where limitation to file a Suit under Section 9 *ibid* has expired, the Financial Institution would take recourse through direct sale of the property without intervention of Court under Section 15 (*ibid*). This cannot be the intention of law, nor can be permitted or approved by the Court. In our considered view, the same limitation would also run insofar as Section 15 of the Ordinance, 2001, and

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132.---To enforce payment of payment of money charged upon immovable property.

Twelve years.

When the money becomes due.

Explanation: For the purposes of this Article---

- (a) the allowance and fees respectively called *malikana* and *haqq*s; and
- (b) the values of any agricultural or other produce the right to receive which is secured by a charge upon immovable property; and
- (c) advances secured by mortgage by deposit of the title deeds shall be deemed to be money charged upon immovable property.

its applicability is concerned. No other interpretation could be arrived at as it can't be that as to action under s.15 *ibid*, no limitation would run, as vested rights accruing to a borrower, after expiry of limitation, would be extinguished. This has never been the intention of law. In fact, law of limitation provides settlement / end of disputes between the parties by operation of law. This is to create an atmosphere of certainty in the society. Indolent litigants do not get what they are even otherwise entitled for, if they have not acted diligently within the limitation period for taking recourse to a remedy as may be available to them. This is how civilized legal system works in a society. The word limitation in its literal term means a restriction or the rule or circumstances which are limited. The basic concept of limitation is relating to fixing or prescribing of the time period for barring legal actions. The main and the fundamental aim of the law of limitation is to protect the lengthy process of penalizing a person indirectly without doing any offence.

9. The law of limitation was a statute of repose, designed to quieten title and to bar stale and water-logged disputes and was to be strictly complied with. Statutes of limitation by their very nature were strict and inflexible. Law of limitation does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment could not be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies were fully complied with in letter and spirit. There was no scope in law of limitation for any equitable or ethical construction. Justice, equity and good conscience did not override the law of limitation. Object of law of limitation was to prevent stale demands and so it ought to be construed strictly⁴.

10. This is notwithstanding the fact that Section 15⁵ of the Ordinance, 2001, in its original forms stands declared *ultra vires* by the Hon'ble Supreme Court in the case reported as *National Bank (Supra)*, however, in the instant matter the said issue does not appear to be relevant in any manner, whereas, even otherwise the subsequent amendment in law has been held to be *intra vires* by a Full Bench (in majority) of the learned Lahore High Court in *Muhammad Shoab*⁶. The controversy here is in respect of limitation and the action taken by the Bank under Section 15 *ibid* after expiry

⁴ Khushi Muhammad v Mst. Fazal Bibi (PLD 2016 SC 872)

⁵ As it stood prior to enactment of "The Financial Institution (Recovery of Finances) Amendment Act, 2016".

⁶ Muhammad Shoab Arshad v Federation of Pakistan (2020 CLD 638)

of the limitation period and not the validity and or application of section 15
ibid.

11. In view of hereinabove facts and circumstances of this case, the Appeal(s) appears to be misconceived as no proceedings are pending as to recovery in terms of Section 9 of the Ordinance 2001, whereas, the limitation also stands expired, therefore, recourse to section 15 of the Ordinance, 2001, was also not available to the Appellants, therefore, learned Banking Court was justified in decreeing the Suit(s) to the extent of prayer clause (c). Accordingly, the Appeals are hereby **dismissed** with pending application(s), if any.

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Abdul Basit