

# **IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

## **1<sup>st</sup> Civil Appeal No. D – 18 of 2019**

(Nadeem Abbas Shaikh & others vs. M/s JS Bank Limited)

Date of hearing: 02-11-2021

Date of Judgment: 02-11-2021

Mr. Muhammad Iqbal Memon Advocate for the Appellant

Mr. Abdul Ghaffar Soomro Advocate for the Respondent-Bank

### **JUDGMENT**

**Muhammad Junaid Ghaffar, J.** – Through this 1<sup>st</sup> Civil Appeal under section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (“**Ordinance**”), the Appellants have impugned judgment dated 07-05-2019 passed by the Banking Court-I, Sukkur in Suit No.373 of 2015, whereby, the Suit filed by the Respondent-Bank, has been decreed.

2. Learned Counsel for the Appellants submits that the Banking Court has failed to appreciate the facts; that the Banking Court should be directed to decide the case on merits after evidence; that the Respondent-Bank forced the Appellants to sign blank documents and then the sanctioned loan was adjusted against the some alleged liability of the brother of the Appellants who used to work in the Respondent-Bank; that no amount of sanctioned loan was ever paid to the Appellants; that if the matter was probed properly then all facts would come on record; hence this Appeal be allowed.

3. On the other hand, Learned Counsel for the Respondent-Bank submits that the loan has not been denied, whereas, all documents including mortgage deed were signed voluntarily, whereas, it is a case of willful default; hence the appeal does not merit any consideration.

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

5. Insofar as the Appellants case is concerned, the same appears to be in contradiction to what has been argued before us when compared with the contents of the leave to defend application. While confronted, learned Counsel submits that some other Counsel had represented the Appellants in the Court below. In the leave to defend application, neither the sanctioning of loan has been denied specifically; nor the application

was filed in compliance of Section 10 of the Ordinance. As to the argument that the signatures were obtained on blank papers and were signed in good faith, it may be observed that the same now stands settled to the effect that this is no ground for grant of leave to defend. Reliance may be placed on the cases reported as ***The Bank of Punjab vs. Arif Ali Shah Bukhari (2016 C L D 1301) and Muhammad Imran and another vs. National Bank of Pakistan and another (2016 C L D 2093)***.

6. As to the other argument, the leave to defend application reflects that neither the amount of loan is denied nor the signing of documents including mortgage deed, but it was contended that the Suit was not maintainable and incompetent. The argument now raised before us regarding some alleged liability of the Appellants brother and the adjustment of the loan was never a plea taken in leave to defend application and the grounds therein. While confronted, it was admitted that no legal action was ever initiated by the Appellants against such forced and unwilling adjustment of the sanctioned loan. In that case the argument appears to be an afterthought and an attempt to avoid repayment of the same.

7. In view of such position, there appears no justifiable cause to interfere with the impugned judgment which has been passed after dismissal of the leave to defend application as noted hereinabove as no such case for grant of the same was made-out. Accordingly, the Appeal being misconceived is hereby dismissed.

**Judge**

**Judge**

ARBROHI