

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1st Civil Appeal No. D – 33 of 2020

M/s Zarai Taraqiati Bank Limited.....Appellant

Versus

Pandhi Khan and another.....Respondents

For Hearing of Main Case

Before:

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Zulfiqar Ali Sangi

Date of Hearing: **25-11-2021**

Date of Decision: **25-11-2021**

Mr. Faheem Majeed Memon, Advocate for the Appellant.

ORDER

Muhammad Junaid Ghaffar, J. – Bailiff’s report has been placed on record, which reflects that Respondent No.1 could not be served as he is absconder in some criminal case; whereas even otherwise he was also ex-parte before learned Banking Court.

2. This 1st Civil Appeal has been filed against Judgment dated 12.11.2020, passed by Banking Court-II, Sukkur in Suit No.513 of 2019 (*M/s Zarai Tarkiyati Bank Limited v. Pandhi Khan and another*), whereby the Suit has been dismissed as being time barred.

3. Learned Counsel for the Appellant submits that the finance facility against mortgage was extended in 2005; whereas some repayment was made on 20.06.2007 and so also on 25.09.2019, when the Respondent No.1 deposited loan amount of Rs.1000/-.According to him, the limitation would start from the acknowledgment/payment of the loan installments. In support of his contentions, he has relied upon the cases of *State Life Insurance Corporation of Pakistan v. Arjan Ram and others* (**PLD 2003 Karachi 523**), *S.M.E., Leasing Limited v. Messrs Umar Knitting and others*

(2011 CLD 1144) and *Messrs Shaheen Enterprises v. Allied Bank Limited*
and others **(2019 CLD 55)**.

4. We have heard learned Counsel for the Appellant and perused the record.

5. It appears that Appellant had filed Suit for recovery of the loan amount and though no specific dates were mentioned in the plaint regarding accrual of cause of action; but it was stated that it accrued as stated in Para 1 to 9 of the plaint and it continues till filing of the Suit; whereas, in Para 9 a breakup of the loan amount and its repayment was mentioned. The learned Banking Court from perusal of this record came to the following conclusion:

“Perusal of the statement of account submitted by the learned counsel for the plaintiff bank with its plaint shows that the loan/finance was extended on 28.05.2005 and thereafter the limitation period starts for repayment of the loan. Perusal of the statement of account further shows that the defendant repaid an amount of Rs.8,297/- on 20.06.2007 but thereafter he has not repaid any amount upto twelve years, so the limitation period for filing of the suit for recovery is upto 20.06.2009 but the suit was filed on 07.10.2019 i.e. after expiry of limitation period.

The learned counsel for the plaintiff bank relied upon PLD 2003 Karachi 523 Re: State Life Insurance Corporation of Pakistan & (2) others Vs. Arjan Ram & (2) others but the facts and circumstances of the same are not identical to the facts and circumstances of the case in hand.

In my humble view the instant suit is time-barred and comes under the limitation for filing of the suit against the defendant, hence suit of the plaintiff bank is hereby dismissed”.

6. Perusal of the above observations reflects that the said findings have been arrived at by counting limitation from the last date as 20.06.2007 and from that date, the maximum limitation of 12-years for finance against mortgage by a Financial Institution expired on 19.06.2019 (wrongly mentioned as 20.06.2019); whereas the Suit was filed on 07.10.2019. In that case the Suit was time barred. While confronted, Counsel for the Appellant has referred to page-55, which is a Bank statement and submits that a payment of Rs.1000/- was lastly made by the Respondent No.1 on 25.09.2019; hence limitation stood extended till that date and therefore the Suit was within time. However, we are not in agreement with this

contention as it is misconceived inasmuch as by that date i.e. 25.09.2019, limitation period of 12 years had already expired and payment of any amount on that date cannot extend the period. It is settled law that any acknowledgment of liability pursuant to section 19 of the Limitation Act, 1908 must be made within the period of limitation, and it is only then, that a fresh period of limitation can begin, whereas, if limitation has already expired and even there is some acknowledgement or repayment as in this case, that does not fall within the ambit of section 19 ibid and no fresh period of limitation begins. Acknowledgment in writing of liability after expiry of limitation would be of no consequence¹.

Z. In view of such position, no case for indulgence is made out. Judgment of the Banking Court appears to be correct in law; therefore, this Civil Appeal is hereby dismissed.

J U D G E

J U D G E

Ahmad

¹ Sahibzadi Shah Bano v Citibank N.A. (2006 CLD 258)