

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

**Ist Appeal No. D – 24 of 2019**

**M/s Bank Islami Pakistan Limited and others v. Choudhry Abdul Jabbar**

**Before:**

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

Date of hearing: **17-02-2022**

Date of decision: **17-02-2022**

Mr. Shahab Sarki, Advocate for the Appellants.  
M/s Muhammad Shameem Khan, Advocate for the Respondent.

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**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 06-09-2019, passed by the learned Judge, Banking Court-I, Sukkur in Suit No.47 of 2018, whereby the Suit of the Respondent has been decreed.

2. Heard the learned Counsel for the Appellants as well as for Respondent and perused the record.

3. It appears that the Respondent had filed a Suit for declaration, settlement of accounts and mandatory injunction against the Appellants. The learned Banking Court had allowed the leave to defend application and settled the following issues:

*“Issue No.1. Whether the plaintiff has no cause of action?”*

*Issue No.2. Whether the suit is not maintainable?*

*Issue No.3. Whether the suit is barred by law?*

*Issue No.4. Whether the act of defendant for de-activating the finance account of the plaintiff without show cause notice is illegal void ab initio?*

*Issue No.5. Whether the defendant is not entitled for markup during de-activated period of finance account?*

*Issue No.6. Whether Insurance of crops was the job of the defendant?*

Issue No.7. *Whether the defendant is liable to settle Agricultural Running Finance account of the plaintiff before expiry date i.e. 30.06.2014?*

Issue No.8. *Whether the plaintiff is entitled for the relief claimed?*

Issue No.9. *What should the decree be?"*

4. Thereafter, through impugned judgment, the learned Banking Court had arrived at the following conclusion and has been pleased to decree the Suit of the Respondent. The relevant finding on the aforesaid issues is as under:

“Issue No.1:-

*Earlier the present suit was rejected U/O 7 Rule 11 CPC by the Former Presiding Officer Mr. Shakeel Hyder vide order dated 18/2/2014. In appeal order was set aside with direction for recoding evidence and deleting the name of Insurance Company as one of the defendant was maintained up to this extent vide order of Hon’ble High Court of Sindh bench at Sukkur dated 06/02/2018 passed by their Lordship of Mr. Justice Nadeem Akhtar and Muhammad Faisal Kamal Alam the Hon’ble Judges Of Sindh High Court. The most important paragraph and findings given in Para No.4 of said order is reproduced below for whom I do not find appropriate words to express my feelings for the guided principle laid down in the said.*

*Perusal of the plaint shows that statement of account was filed by the appellant as annexure ‘D’ to the plaint, which fact was clearly stated in the paragraph 17 of the plaint. Thus, finding of the learned Banking Court that the appellant did not file statement of account and had failed to comply with requirement of Section 9 ibid, was erroneous, and as such the plaint could not be rejected on this ground. Regarding the other ground that no cause of action had accrued to the appellant, it may be observed that the learned Banking Court did not appreciate the averments and allegations made in the plaint regarding breach of obligations allegedly committed by the respondents in relation to the alleged unauthorized and illegal debits from the appellant’s account towards Insurance premium and other charges. The learned Banking Court also failed to appreciate that the appellant had filed Suit for rendition of accounts which could not be decided without evidence, and that such Suit is maintainable under the Ordinance. The plaint could not be rejected merely upon consideration of terms and conditions of the mortgage deed in isolation without affording opportunity to the parties to lead evidence in relation thereto and the accounts. Moreover, the above finding could not be given before deciding respondent’s application for leave to defend, and if the learned Banking Court was of the view that the stance of the respondents*

*was correct in view of the terms and conditions of the mortgage deed, at best leave could be granted to the respondents to defend the suit on merits. In view of the above discussion, the impugned order and decree are not sustainable in law and as such are liable to be set aside to the extent of rejection of the plaint.*

*Reverting to Issue No.1, the suit in hand is filed for Rendition of Account, who will decided the suit obviously Banking Court is competent to decide the fate of the parties. The relationship in between the parties is exist. Cause of action is accrued. Suit is very much maintainable answer is in affirmative.*

Issue No.2:-

*This issue is inter-connected with issue No.1. I gave the answer is in affirmative same answer for this issue which is in affirmative.*

Issue No.3:-

*The burden lies on defendant to prove under which law suit is barred? Neither in any law nor it hit any provisions of CPC. The crystal response is suit is maintainable answer is in affirmative.*

Issue No.4:-

*This is well settled preposition of law that nobody should be condemn unheard. The witness of defendant Mr. Muhammad Ali Riaz examined before us totally ignorant about the facts of the case. Mostly his answer is that he do not know. Even he do not know that while Finance Account of plaintiff Choudhry Abdul Jabbar was de-activated no show cause notice was served. He also showed his ignorance regarding de activated position of finance account. The defendant bank violated the basic principle. Order is passed by the defendant bank is nullity in the eyes of law hence answer to this issue is in affirmative.*

Issue No.5:-

*Adverse order for de-activation of finance account was passed without show cause notice, without hearing the plaintiff therefore whatever amount is calculated by the defendant bank. During de-activation period is nullity in the eyes of law and product of illegal Act. More over the entire crops of the plaintiff badly damaged and destroyed. This fact is confirmed by notification of Revenue Department dated 27-02-2012. After having been arises this situation the defendant could not be afford the markup and etc. Hence answer to this issue is in affirmative.*

Issue No.6:-

*While releasing the loan for disbursement and it is the duty of defendant Bank to be vigilant with the settled terms and conditions but should also in their mind the orders, Directions, Standing order, Circular of State Bank of Pakistan. The witness for the defendant examined before us having no knowledge just for formality was entered in the witness box namely Muhammad Ali*

*Riaz. I am unable to understand that how he is serving in defendant bank! What is his job description? According to the circular of State Bank of Pakistan dated 08-09-2008 the borrower is only require to fill up the Input form and handed over to the bank, further responsibilities lies on the defendant bank for crops insurance. If we consider for a moment that it is responsibility of plaintiff, but on the other hand why before expiry date his finance account was de-activated without informing, without hearing, without show cause? How he made crop insurance without money?*

*The validity of State Bank of Pakistan circular cannot be denied, circular, letter, directive, etc do prevail upon the Financial Institution (Recovery of Finances) Ordinance 2001 it is on the record that in several court Hon'ble High Court as itself directed the concerned bank to follow the circular, letters, directive, etc. These are treated as legal documents and could not be challenged. Reliance is placed on 2008 CLD 1285 Karachi (DB). Therefore I can safely say that in view of circular of State Bank of Pakistan dated 8/9/2008 which is available in the R & P. The crops insurance was the job of defendant bank, he abdicated from his responsibility and burden of crops insurance cannot be shifted to plaintiff. Hence answer is in affirmative.*

Issue No.7:-

*The expiry date of Running Finance Account was on 30.06.2014 and whatever action is taken by the defendant bank before 30.06.2014, is nullity in the eyes of law hence answer to this issue is in negative.*

Issue No.8:-

*No one comes to the Court just for enjoying and passing leisure time, circumstances brought the plaintiff to this Court for redressal his grievance gross injustice is meted out to the plaintiff his entire crops destroyed during raining, Government of Sindh has also got released the notification of Revenue Department dated 27/02/2012 which is available in the R & P and has attained finality beside Benazirabad (Nawab Shah) other districts are also effected for heavy rains. Astonishingly that the plaintiff bank did not considered this vital documents for the reasons best known to him, hence answer to this issue is in affirmative.*

Issue No.9:-

*Pursuant to the above discussion suit of the plaintiff is decreed as prayed.”*

5. Perusal of the aforesaid finding of the learned Banking Court reflects that the Suit has been held to be maintainable in view of the fact that earlier when the Plaint was rejected under Order VII Rule 11 CPC, this Court had set aside the said order with certain observations, and therefore, it was held that the Suit is maintainable; whereas, the Appellants' Counsel has also not seriously agitated such finding of the Banking Court, hence, to the extent of Issues No.1, 2 & 3, no further deliberation is required.

6. As to the remaining finding of the Banking Court is concerned, it appears that the same is based on reasoning, which is not supported by law or even the evidence on record. As to issuance of any show-cause notice before activation or deactivation of a Running Finance Facility, admittedly, there is no such concept in the banking law / Ordinance, and therefore, to that extent the finding of the Banking Court cannot be sustained. Once a customer or borrower has defaulted in payment of the principal amount or the agreed mark-up, the facilities cannot continue, more so, when it is a Running Finance Facility.

7. As to remaining issues, the crux of the finding of the Banking Court appears to be that the Appellants pursuant to circular of State Bank of Pakistan dated 08-09-2008 were required to get the crops insured on its own against which the loan has been provided, as against the claim of the Appellant that it was the responsibility of the Respondent as agreed. We have been assisted by the Appellants' Counsel that such circular was never issued by the State Bank of Pakistan and was in fact, a circular of some other bank advising its branches and managers all over Pakistan. When we confronted the Respondent's Counsel, he has responded that from record it is not established that it is a circular of some other bank, but at the same time, he has also not been able to assist us that whether this circular was ever issued by State Bank of Pakistan. There is no number assigned to the said circular; whereas, when the said circular is read as a whole along with attached documents, it appears that it has got nothing to do with State Bank of Pakistan, but in fact is a circular of another private bank. The Banking Court has not given any finding as to how this was a circular of the State Bank of Pakistan.

8. Not only this, we have been further assisted that insofar as the offer letter dated 11-06-2011 is concerned, the same clearly provided in Para-8 that the insurance of crops has to be done by the Respondent / borrower. It would be advantageous to refer to the said paragraph of the offer letter, which reads as under:

*“8. You shall keep the goods/security/collateral/credit support/ property granted to the Bank duly insured covering all usual risks as the Bank may deem appropriate including but not limited to theft, burglary, fire, damage from water etc with an insurance company acceptable to the Bank for a sum not less than the amount determined by the Bank. The Bank shall be designated as the loss payee under any such insurance policy and you shall deliver to the*

*Bank copies of receipts evidencing payment of the premium, in respect thereto.”*

Perusal of the aforesaid document clearly reflects that it was the responsibility of the borrower to get the crops duly insured covering all usual risks as the bank may deem appropriate and the bank was to be designated as the loss payee under such insurance policy. While confronted, Respondent's Counsel has not been able to controvert this document as the same has also been admitted in the evidence. Once an agreement is reached by the borrower which is an admitted document, then the parties are bound by the terms of the agreement and cannot resile from the same. There is no other material except reliance on the circular referred hereinabove to seek a favorable judgment from the Banking Court, and therefore, in our considered view, the Banking Court has seriously erred in law as well as on facts by decreeing the Suit of the Respondent / borrower.

9. In view of hereinabove facts and circumstances of this case, the impugned judgment dated 06-09-2019 passed in Suit No.47 of 2018 by the learned Banking Court-I, Sukkur cannot be sustained, and therefore, was **set aside** by means of a short order in the earlier part of the day and these are the reasons thereof.

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Abdul Basit