

Judgment Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

1st Civil Appeal No. D – 07 of 2014

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Muhammad Faisal Kamal Alam

Appellant :

Chaudhry Abdul Jabbar, through Mr. Rasool Bux Siyal Advocate.

Respondent No.1 :

Presiding Officer, Banking Court-II, Sukkur.

Respondents 2 to 4 :

Bank Islami Pakistan Limited,
General Manager, Bank Islami Pakistan Limited, Karachi, and
Manager, Bank Islami Pakistan Ltd., Nawabshah Branch,
through Mr. Sajjad Muhammad Zangejo Advocate.

Respondent No.5 :

United Insurance Company of Pakistan, called absent.

Date of hearing : 13.12.2017.

J U D G M E N T

NADEEM AKHTAR, J. – Through this appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance 2001 (**'the Ordinance'**), the appellant has impugned order dated 18.02.2014 passed by learned Banking Court-II Sukkur in Suit No. 54 of 2012 and decree dated 18.02.2014 drawn in pursuance, whereby plaint of the said Suit filed by the appellant was rejected on the grounds that the Suit was barred under Section 9 of the Ordinance and the plaint did not disclose any cause of action.

2. Relevant facts of the case are that the appellant filed Suit No.54/2012 against the respondents before the learned Banking Court for declaration, settlement of accounts and mandatory injunction. In his said Suit, it was pleaded by the appellant that he was an old customer of the respondent-bank as he had availed several finance facilities from the respondents from time to time which were settled by him ; he requested for renewal of Agricultural Running Finance Facility for the year 2011-2012 to the tune of Rs.16.000 million which was sanctioned by respondent No.1 on the terms and conditions stipulated in the sanction letter ; the appellant furnished security in consideration of the said renewal which was to expire on 30.06.2014 ; under the circulars issued by the State Bank of Pakistan and as per the contract between the parties, the respondents were obliged to get the crops of the appellant

insured through the Insurance Company / respondent No.4 and to pay premium in respect thereof ; and, the respondents failed in fulfilling their above obligation and they also debited substantial amounts from the account of the appellant unauthorizedly towards insurance premium. It was alleged by the appellant that his account was frozen / de-activated by the respondents illegally on the ground that he did not pay the insurance premium and other charges claimed by the respondents. In this background, the above Suit was filed by the appellant seeking declarations that since there was a relationship of financial institution and customer between the parties, the action of de-activating his account taken by the respondents without any notice to him was illegal and void, and it was the duty / obligation of the respondents to get the crops insured premium whereof was to be debited from his account. A direction was also sought by the appellant against the respondents for settlement of his account and to re-activate the same.

3. A joint application for leave to defend was filed by respondents 1 to 3 in the appellant's Suit. The matter was heard by the learned Banking Court and through the impugned order, plaint of the Suit was rejected on the grounds that the Suit was barred under Section 9 of the Ordinance and the plaint did not disclose any cause of action. The name of the insurance company / respondent No.4 was deleted from the array of respondents by holding that the Suit cannot be filed under the Ordinance against an insurance company. The main reason given by the learned Banking Court for rejecting the plaint is that no statement of account was filed by the appellant along with his plaint as required by Section 9 of the Ordinance and as such the Suit was barred under the said Section 9, and no cause of action had accrued to the appellant as it was stated in the mortgage deed that it was the responsibility of the mortgager (appellant) to keep the property insured through an insurance company approved by the respondent-bank.

4. 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 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 the 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 the respondents' 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.

5. Since no relief was sought by the appellant against respondent No.5 / insurance company and its presence before the Court was not necessary, we are of the view that the impugned order is just and proper to the extent of deletion of the name of the said respondent from the array of defendants.

6. Foregoing are the reasons of the short order announced by us on 13.12.2017 whereby this appeal was allowed, impugned order and decree were set aside to the extent of rejection of the plaint and learned Banking Court was directed to decide the appellant's Suit No.54/2012 strictly in accordance with law by deciding application for leave to defend filed by the respondents. It is clarified that the observations made herein are tentative in nature which shall not affect the merits of the case of any of the parties.

JUDGE

JUDGE