

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

1st Appeal No. 60 of 2018

Present:

Mr. Justice Muhammad Iqbal
Kalhoro

Mr. Justice Faheem Ahmed Siddiqui

Appellant : M/s. Sakrani Oil & Floor Mills

Versus

Respondents : The Manager National Bank of Pakistan
and another

Date of Hearing : 21.05.2019

Date of Decision :

Mr. Raja Jawad Ali Sahar, advocate for appellant
Mr. Muhammad Nawaz, advocate for respondent bank

MUHAMMAD IQBAL KALHORO, J.- The appellant is a business concern, doing business in the name and style of M/s. Sakrani Oil and Floor Mills at Kotri and availed three financial facilities from respondent No.1 i.e. National Bank of Pakistan and executed in this regard relevant papers. Since he could not adhere to the terms and conditions of the financial agreement and committed default, he was issued notices in terms of Section 15 of Sindh Financial Institution (Recovery of Loans) Ordinance 2001 (2001 Ordinance). Apprehending the action in terms of said notices, appellant filed Suit No. 68 of 2008 in Banking Court at Hyderabad against Respondent Bank for rendition of accounts, declaration, permanent injunction and damages with consequential relief under Section 9 of the Ordinance 2001. After notice, the Bank filed an application for leave to defend the suit which was granted vide order dated 12.2.2010. Thereafter issues were framed by the Court. However, meanwhile appellant filed an application under Order 12 Rule 6 read with Section 151 CPC requesting the Court to decree the suit as the respondent Bank had admitted his claim through statement dated 11.4.2018. This application was contested by respondent Bank which led to passing of impugned order dated 10.9.2018 whereby the application has been dismissed

and in the light of undertaken given by respondent Bank in respect of prayer clauses A, B, C and F which are mostly in respect of declaring notices as unlawful and seeking protection against the action which was likely to be taken in the wake of such notices, the suit was held to be infructuous whereas in respect of prayer clause B and E which are in respect of seeking direction for the Bank to furnish complete statement of accounts and to right off the markup. The Trial Court decided to consider the same in Execution Applications No. 80 & 81 of 2011 filed by respondent Bank against appellant in respect of same subject matter. However holding the same, the suit of the plaintiff has been disposed of as having become infructuous. The appellant being aggrieved by the said order has filed the instant petition.

2. It may be mentioned that during pendency of aforesaid Suit No. 68 of 2008 the respondent Bank filed Suit Nos. 44 & 45 of 2010 against appellant for recovery of amount of loan which he failed to return. The appellant filed written statement along with application under Section 10 of 2001 Ordinance seeking leave to defend the suits but the same were dismissed by the learned Banking Court vide order dated 23.6.2011 and consequently the suits filed by the respondents Bank were decreed vide judgment and decree dated 23.6.2011. When the appellant could not comply with the terms and conditions of aforesaid judgment and decree the aforesaid Execution Application Nos. 81 & 82 of 2011 were filed which are yet pending before learned Banking Court and while passing the impugned order the learned Banking Court has observed that the grievance of the appellant in respect of furnishing complete statement of accounts by respondent Bank and to right of the markup articulated in prayer clause B & E of the suit filed by him would be considered in the aforesaid execution applications.

3. We have heard learned counsel for the parties and perused the material available on record.