

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
1st Civil Appeal No. 20 of 2022

Present:

Mr. Justice Zafar Ahmed Rajput, J.

Mr. Justice Shamsuddin Abbasi, J.

Appellant : Arbab Ali s/o Shah Nawaz Khan, through
Mr. Abdul Basit Shahani, Advocate.

Respondent : House Building Finance Corporation
Limited (*nemo*)

Date of hearing : 17.08.2022

Date of Order : 17.08.2022

ORDER

ZAFAR AHMED RAJPUT, J:- This First Appeal under section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (*“the Ordinance”*) is directed against the Judgment dated 13.04.2022 and Decree drawn on 16.04.2022, whereby the Banking Court No. II, Sukkur decreed Suit No. 494 of 2020 filed by the respondent/plaintiff against the appellant/defendant for recovery of Rs. 4,85,356/= with costs of suit as well as cost of funds to be determined under section 3(2) of the Ordinance.

2. Briefly stated facts of the case are that the respondent is a Housing Finance Corporation, which is a subsidiary of State Bank of Pakistan and is a “financial institution” within the meaning of and as defined in section 2(a) of the Ordinance. The appellant being sole owner of the house bearing C.S. No. 433/2, Ward ‘C’, Mohallah Pir Mahboob Ali Shah, Ghotki applied for and availed finance facility from the respondent Corporation under Sanction Order, dated 29.08.2003, vide Account No. 805000141-4, to the tune of Rs.2,00,000/- for 22 years under “Ghar Aasan Scheme” and

executed various documents including Deed of Assignment in favour of respondent Corporation. The appellant utilized said finance facility but failed to fulfill his obligation to repay the outstanding liabilities; therefore, the respondent Corporation filed aforesaid suit. The appellant filed an application for leave to defend, under section 10 of the Ordinance, before the Banking Court mainly on the grounds that he had good prima facie case and he would suffer heavy loss if the application was not granted. After hearing the learned counsel for the parties, the Banking Court dismissed the said application vide order, dated 22.11.2021, and decreed the suit vide impugned Judgment and Decree.

3. Learned counsel for the appellant contends that the impugned Judgment and Decree are not sustainable in law as the same have been passed without considering the case of the appellant agitated before the Banking Court; that the Banking Court has seriously erred in law and facts while passing impugned Judgment and Decree; that out of total finance facility of Rs. 2,00,000/=, the appellant has paid Rs. 1,54,189/=; as such, there remains only Rs. 45,911/= as outstanding, which amount the appellant is ready to pay to respondent.

4. Heard the learned counsel for the appellant, perused the record and the impugned Judgment and Decree passed by the Banking Court.

5. It is an admitted position that the appellant has not denied availing of alleged finance facility, execution of finance documents and his liabilities thereunder. He neglected and failed to pay monthly installments as per payment schedule and paid only Rs. 1,54,189/=,

thus, he committed willful default in payment of monthly installments. He claims that there remains only Rs. 45,911/= as outstanding against him, which amount is outstanding towards principal amount; he has not added the mark-up payable by him on the finance facility availed by him. He has not challenged the entries of Statement of Account produced by the respondent Corporation in his application for leave to defend, which admittedly did not contain a summary of the substantial questions of law as well as fact in respect of which, evidence was needed to be recorded as required under sub-section (3) of section 10 of the Ordinance.

6. In view of presence of overwhelming documentary evidence, the assertions made by the learned counsel for the appellant appear to be imaginary and hypothetical, which require no consideration. The claim of the respondent Corporation is substantiated by the unrebutted documents on record.

7. For the foregoing facts and discussion, we do not find any illegality or irregularity in the impugned Judgment and Decree passed by the learned trial Court requiring any interference of this Court under its appellate jurisdiction. This appeal is, therefore, dismissed in *limine* along with pending applications.

JUDGE

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