

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

First Appeal No.105 of 2016
Muhammad Naveed & others Versus Habib Bank Limited

First Appeal No.106 of 2016
Tehsin Ahmed & others Versus Habib Bank Limited

Dated	Order with signature of Judge
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial

Hearing case (priority)

1. For order on office objection/reply at A
2. For hearing of Main Case
3. For hearing of CMA No. 2872/2016 (stay)

Dated 17.01.2024

Mr. Khaleeq Ahmed, Advocate for the Appellants
Mr. Talha Jawed Advocate for the respondent

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Muhammad Shafi Siddiqui, J.- Mr. Khaleeq Ahmed and Mr. Talha Jawed have argued the matter at length. He has primarily relied upon the applicability of Section 2(8) of the Bankers Book Evidence Act, 1891, which is mandatory in its application and is not complied when the Statement of Account was perused by the Banking Court while decreeing the suit in the instant case. Leave of the Appellant was refused on account of non-compliance of the requirement of the Section 10 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (“the FIO”). Mr. Khaleeq submits that before Section 10 of the FIO could be perused, Section 9 of the FIO within which frame a bank has to file a suit, has to be applied which is not found to have been complied and had it been perused it could have led to the dismissal of the suit in terms of the case of Appolo Textile Mills Ltd & others Vs. Soneri Bank Limited (PLD 2012 SC 268).

2. We have heard counsel and with the assistance of the counsels, perused record and also the Statement of Accounts which is the primary piece of evidence to ascertain the outstanding amount as leave was refused. Had it been perused minutely by banking Court, the Statement of Account could not have been relied upon since apparently it is not in compliance of Section 2(8) of the Bankers Book Evidence Act, 1891. To understand the consequences of above effect, a statement of account is relied upon which is not certified to have contain correct figures and statistic yet on such reliance suit decreed.

3. We have asked the learned counsel for the appellant to establish that the Statement of Account as relied upon by the Banking Court has been duly complied but he failed, rather seeks time. His case is that since leave was refused, the Court had no option but to rely on documents which are available with the plaint. Since the counsel has not been able to establish that the Statement of Account were duly certified it becomes the case for grant of leave.

4. Financial Institutions (Recovery of Finances) Ordinance, 2001, has rationale of schematic discipline; a suit under such jurisdiction is normally a suit dependent on accounts, which are duly ledgered and maintained in the books of Accounts under the prescribed format of accounting in terms of the rules and banking practice. The subject claim is not left on the option of the parties to claim it generally as the ordinance binds the parties to be absolute and specific on accounts and the statement as being authentic and verified. If that is not the case then the purpose of the ordinance cannot be achieved, which is summary as is dependent on grant of leave to defend. Once leave is refused, a debatable Statement of Accounts, which is not certified as required, cannot give rise to a decree of that much amount as disclosed therein.

5. The Appolo Textile Mills case (supra), as relied upon although is a leave refusing order and normally a leave refusing order is not binding in terms of Article 189¹ of the Constitution of the Islamic Republic of Pakistan, 1973, however, the order has also rendered some principal of law to which we find no cavil. The scheme of Section 9 and 10 *ibid* is addressed therein. Para 22 of the judgment is relevant and is read as under:-

“Despite rejection of the leave petition as above, and loss of the right to defend the suit, the learned Advocate Supreme Court for the petitioner/defendants insisted that the Courts should have considered the request of the petitioners for rejection of the plaint as in above referred case of “**Bankers Equity Limited through Principal Law Officer and 5 others v. Messrs Bentonite Pakistan Limited and 7 others**” (2003 CLD 931), on the purported basis of incomplete Statement of Accounts. The cases referred to by the learned counsel did adjudge that in the absence of the support of Statements of Accounts and finance documents, Bank’s plaint was liable to be rejected. The learned counsel does not appear to have examined the reasons upon which the said judgments were founded. Consequent upon the rejection of the leave petition, the defendants were deemed to have admitted the contents of the plaint. The defendants remained bound thereto. The Court of course was not so bound. It was not expected to proceed blindfolded. The Court therefor in performance of its duty, itself examined in the said cases (as in this case) the plaint along with documents to decide as to whether the suit complied with the mandatory provisions of section 9 *ibid* or not and as to the nature of the order, judgment or decree to be passed by the Court”.

6. The judgment may not bind us in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973, but we are in agreement with the observations made therein that in the first instance it is to be seen whether a plaint has complied all the requirement of Section 9 of the FIO, failing whereof, the consequences would follow, which in the instant case should have been a grant of leave in the absence of a true Statement of Accounts, as it is not the correct reflection of account.

¹ Kareem Nawas Khan Vs. the State through PGP & another (2016SCMR 291) & The Commissioner Inland Revenue Vs. The Secretary Revenue Division & others (2020 SCMR 2055)

7. Statement of account, on the basis of which suit was decreed becomes disputed and cannot be relied upon and it becomes case of evidence. Learned counsel has no response to it.

8. In view of the above, we are of the view that where the defects in the Statement of Account has been pointed out, even on such score alone leave ought to have been granted by virtue of requirement of Section 9 of the FIO, and hence after hearing the counsel, we reached to the conclusion that the impugned judgment was passed in haste without looking the statement of account and its applicability in the present form.

9. The appeals are allowed to the extent that leave is granted. Leave application is considered as Written Statement. Parties may record evidence in support of their respective pleadings and we expect that the trial may be concluded within six months' time.

JUDGE

JUDGE

Amjad PS

