Judgment Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1st Civil Appeal No.D-31 of 2021

Appellant : Zarai Taraqiati Bank Ltd,
Through Mr. Habib Khan, Advocate

Respondents No.1 &2: Nemo

Date of hearing : **06.09.2023**

Date of Decision : **06.09.2023**

JUDGMENT

ARBAB ALI HAKRO, J.- Through this appeal under Section 22 of Financial Institutions (Recovery of Finances) Ordinance, 2001 (**'the Ordinance'**), the appellant has impugned judgment dated 05.08.2021 and decree dated 06.08.2021, passed by Banking Court No.2, Sukkur (**'the trial Court'**), in Suit No.589/2019, whereby the said Suit filed by Zarai Taraqiati Bank Ltd **(appellant herein)** against Mst. Imam Zadi and Taj Hussain **(respondents herein)** was dismissed being time barred.

2. Relevant facts of the case are that the above Suit was filed by the appellant against the respondents for recovery of Rs.6,11,806/- alongwith markup. It was the case of the appellant that the respondents are his borrowers and they had obtained loan from them amounting to Rs.150,000/- for agricultural purpose under L.C No.095907. Thereafter, they failed to adjust the loan up to amount of Rs.6,11,806/-, which was outstanding against them. When respondents failed to discharge their contractual obligation, appellant bank filed a Suit.

3. None has appeared on behalf of the Respondents despite publication of proclamation in daily newspaper "Kawish" dated 14.03.2023, therefore, service was held good vide order dated 13.04.2023.

4. At the very outset, learned Counsel representing the appellant contended that the impugned judgment and decree passed by trial Court is illegal unlawful without mentioning proper reasons for dismissing the suit being time-barred. It is next argued that first payment of installment was paid on 31.03.2015 and such statement of accounts is specifically pleaded in the plaint as well as affidavit in ex-parte proof but the trial Court overlooked such aspect of the case and erroneously dismissed the suit and impugned judgment is quite illegal, unjustified and without lawful authority. It was further argued that if the judgment and decree is not set-aside, the appellant shall be deprived of their valuable rights involved in the matter. Furthermore, learned Counsel for the Appellant submits that period of limitation does not arise as the payment has been made before expiration of the prescribed period and a fresh period of limitation shall be computed from the time when the payment was made.

5. We have heard the arguments advanced by learned counsel for the appellant and minutely perused the material available on record.

6. The trial court dismissed the appellant's suit solely on the ground that it was filed more than 12(twelve)

years after the time limit specified in Article 132 of the L. A, 1908. It is convenient in the first place to set out the relevant statutory provisions. Article 132 of L.A, 1908, states that the period of limitation for a suit *"to enforce payment of money charged upon immoveable property"* would be twelve years and the period of limitation begins to run from the time *"when the money sued for becomes due"*. It appears that Appellant had filed Suit for recovery of the loan amount of Rs.6,11,806/- under the Ordinance, wherein it is stated that the appellant's bank had provided financial facility to the respondents to the tune of Rs.1,50,000/- on 16.12.1997. It is matter of record that respondents' paid installments of Rs.500/- on 31.03.2015 & Rs.35000/- on 17.05.2017 and thereafter they failed to pay the remaining installments. No specific dates were mentioned in the plaint regarding accrual of cause of action and simply in Para No.7 of the plaint it is stated that plaintiff has approached the defendants time and again for repayment/adjustment of outstanding amount, but they kept them on false promises and finally refused. However, no date, time or place mentioned by the appellant on which they approached the respondents. In Para No.11, it is simply stated that cause of action accrued to the appellant bank against the respondents as stated in Para No.3 to 9 and it continued till filing of the Suit. The trial Court has rendered a decision to dismiss the appellant's suit being time barred based on the following observations: -

> *"From perusal of record and proceedings of this case, it transpires that the finance facility involved in this case pertains to the year 1997 which was payable*

upto twelve years and the instant suit was filed on 02.11.2019 i.e. after the laps of twenty two years. On the point of limitation, the learned Counsel for the plaintiff bank submitted that earlier to instant case plaintiff bank had filed Suit No.170/2015 in which the defendants had settled the matter and made part payment of Rs.35,000/- to the plaintiff bank and promised that remaining amount will be paid within few months, therefore the plaintiff bank withdraw the suit but the defendants later-on had not deposited the outstanding amount to the plaintiff bank, hence the instant suit was filed by the plaintiff bank against the defendants, in order to substantiate this plea, the plaintiff bank has not placed on record any documentary evidence, neither copy of suit nor any statement showing that such settlement was reached between the parties. Even otherwise, as per statement of account produced by the plaintiff bank, it is crystal clear that the loan was obtained in the year 1997 and first repayment is shown on 31.03.2015 i.e. after about eighteen years of obtaining loan. The learned counsel for the plaintiff bank relied upon the case law reported in 2004 MLD 943 Re: Khairat Masih through L.Rs vs. Aziz Sadiq and submitted that the principle of resjudicata could not apply in this matter. I have gone through the contents of the citation cited by the learned Counsel for the plaintiff bank and have much regard for the same but the facts and circumstances are quite distinguishable from the facts and circumstances of the case in hand."

7. So far the contention of learned counsel that suit is filed within the period of limitation as the last payment of installment deposited by the respondent was on 17.05.2017. It may be true that limitation in banking suit, normally does not run from the date of disbursement of loan; but from the last date of payment or default; however, this is only true when such last payment has been otherwise made within the applicable limitation period. In this case a loan agreement, certificate of charge creation and surrender of agricultural pass-book have been signed and/or handed over to the appellant; however, since this is a case of mortgage of agricultural land and its produce, the limitation is 12 years

from the date when money became due. On perusal of the plaint and affidavit-in-exparte it appears that both documents are silent as to when the cause of action accrued. It has not been stated that what happened during the period from 1997 to 2019 when in between purportedly some amount was deposited by the respondents. Last amount admittedly was deposited on 17.05.2017 after expiry of period of 12 years. It is also settled law that acknowledgement is in terms of Section 19 of Limitation Act can be relied upon only if the same is within prescribed period of limitation and not otherwise. Any acknowledgment in any manner beyond the period of limitation is of no help. Even if the payment was made by the respondent on 17.05.2017 this would not extend the period of limitation any further and it will not be counted from such date. The Record also reflects that no application for seeking discretionary relief of extension of time by the appellant - bank was filed in Banking Court to satisfy that there was sufficient cause for not filing the suit within time.

8. Moreover, Section 24 of the Ordinance, provides that save as otherwise provided in this Ordinance, the provisions of Limitation Act shall apply to all cases instituted or filed in Banking Court after coming into force of this Ordinance and a Suit under Section 9 of the Ordinance, may be entertained by the Banking Court after period of limitation prescribed therein has expired, if the plaintiff satisfies the Banking Court that there was sufficient cause for not filing the Suit within the stipulated time. The record reflects that no such

application for seeking this otherwise discretionary relief was preferred by the appellant before the trial Court. Such being the position, we understand that the trial Court has rightly appreciated the question of limitation while handing down the above impugned finding whereby the recovery suit of the appellant bank has been dismissed as being time-barred.

9. Notwithstanding, where a suit has been filed after period of limitation prescribed there for by the first schedule of L.A, 1908, same is liable to be dismissed under Section 3 of L.A, 1908 and the trial Court is under bounden duty to take notice of question of limitation for the simple reason that provision of Section 3 of L.A, are couched in a mandatory form empowering the Court before whom the suit has been filed, to dismiss the same if it is found not brought to the Court within the time prescribed by the first schedule of L.A, 1908. It is by now settled principle of law that limitation is not a mere technicality; and once the period of limitation expires, the right is accrued in favour of contesting party by operation of law and the same cannot be ignored lightly. In this context, we rely upon the case of **Asad Ali and others vs. The Bank of Punjab and others (PLD 2020 Supreme Court 736,** wherein Apex Court has held as under: -

> *"10. _ _ _ _ _ _ It is settled law that limitation is not a mere technicality (or a hyper technicality as it had been termed by the Tribunal). Once limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away."*

10. It may be noted at the outset that Section 19 of the Limitation Act deals with the effect of acknowledgement in

writing for the purpose of computation of limitation for instituting the proceedings from the time when the acknowledgment has been made in writing i.e. accepting the liability, whereas provisions of Section 20 (i) of the Limitation Act directly deals with an acknowledgment of the payment appears in the handwriting of, or in a wring signed by, the person making the payment, therefore, to determine the question of Limitation for filing proceedings for redemption for recovery of liability, this provision of law would be applicable. According to judicial consensus prevailing with the Indian Superior Courts, Section 20 of the Limitation Act applies only to extend the time for recovery of mortgage debit and is not an extension of time for redemption. Reference to this may be made to the judgments of ***Privi-council*** in the case of ***Muhammad Akber Khan vs. Mst. Motai and others (ILR 1947 PC Lahore) 727, Bhagwan Ganpat vs. Madhav Shankar and others (AIR 1922 Bombay 356 and Piroze Khan and others vs. Kanhayia Ram (AIR 1994 Lahore 484),*** whereas, the opinion of our Courts emerging from the judgments in the case of ***Abdul Haq v. Ali Akber (1998 CLC 129)*** is that where mortgage land is in possession of mortgagee, receipt of rent or produced of such land under Section 20 (2) of Limitation Act is deemed to be a payment on account of debit or of interest under Section 20(1) of the Act and amounts to an acknowledgment, provided such receipt of rent or produced is before expiration of prescribed period of limitation. Thus following the dicta laid down by in the case of Abdul Haq (ibid), it has held that payment of rent or interest

by a mortgage or mortgager cannot only be considered extension in the limitation for recovery of amount but simultaneously such acknowledgment would also be considered extension in the period of limitation for instituting the proceedings for redemption of the mortgage property or recovery of loan.

11. So far as the submission of learned Counsel for the appellant that period of limitation for filing the suit in fact was to compute from the fresh point of limitation when Respondent by depositing the amount to the tune of Rs.500/- consciously acknowledgment is liability in respect of suit amount is concerned, it does not find support either from the contents of plaint or from the documents annexed therewith. It has never been the case of Appellant as per contents of plaint that Respondent in fact deposited certain amount in the year, 2015 and thereby tacitly acknowleded his liability and in turn accruing fresh period of limitation to appellant to file the suit from that date under the provisions of Section 19 & 20 of the Limitation Act, 1908. Learned Counsel for the Appellant upon a query by us, remaindered unable to either refer to or produced any document showing acknowledgment in writing by the Respondents in terms of Section 19 & 20 of the Limitation Act. On one hand, there was no specific stance taken by the appellant in the plaint qua deposit of any amount by the Respondent before the expiry of limitation and on the other hand, no tangible material or document was available on the record to establish acknowledgement of

payment by the Respondent either in writing, in his handwriting or in the writing signed by him by making any payment against outstanding amount. Even otherwise, in order to invoke the provision of Section 19 of the Limitation Act, the continuous precedent that such acknowledgment ought to have been made within the period of limitation prescribed for the claim sought to be enforced was to be fulfilled in the first place. Similarly as per provision of Section 20 of the Limitation Act, 1908 any created entry in the amount constituting an acknowledgment of payment must have been in writing or in writing signed by the person making the payment so as to bring the case either within the purview of Section 19 & 20 of the Limitation Act whereby acknowledgment of payment was to be made in handwriting or writing signed by the person making the payment within the period of limitation. Fresh period of limitation would only start when first payment/ acknowledgment has been made before the expiry of period of limitation and secondly the same is in the handwriting and signed by a party against whom any right is claimed. Learned Counsel for the appellant however has failed to point out or refer any document showing payment of Rs.500/- in the writing or even signed by the Respondent.

12. Learned trial Court rightly appreciated to non-suit the appellant by holding that the suit filed by the appellant being barred by the period of limitation. Nothing either tangible or plausible material has been referred by learned

Counsel for the appellant to convince or to take any exception to the impugned judgment which has been rightly passed by learned Judge, Banking Court No.II, Sukkur, after going through the whole material available on record.

13 The upshot of the discussion is that the appeal in hand is devoid of any force hereby dismissed with order as to costs.