

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**I. A. No. 24 of 2023**

**Present:**

Nadeem Akhtar, J  
and Yousuf Ali Sayeed, J

Jamil Ahmed Ghaznavi-----Appellant

Versus

M/s. Bank Alfalah Limited and another-----Respondents

**04.10.2023.**

Mr. Ghulam Murtaza, Advocate for the Appellant.  
Mr. Suleman Huda, Advocate for Respondent No.1.

-----

**YOUSUF ALI SAYEED, J.** - The captioned Appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the “**Ordinance**”) arises out Suit No.993/2016 adjudicated by the Banking Court No. II at Karachi, where judgment was entered on 06.02.2023 in favour of the Respondent No.1 bank against the defendants jointly and severally in the sum of Rs.3,999,690.13 along with cost of funds from the date of default till realization of the entire decretal amount, with the prayer for sale of the properties mortgaged by the Appellant also being allowed, and the decree then being drawn up on 16.02.2023.

2. The Appeal is multifaceted, as the Appellant seeks to firstly call into question the propriety of the Banking Court's Order dated 06.02.2023, whereby his Application for condonation of the delay under Section 5 of the Limitation Act read with Section 10(2) came to be dismissed along with his Application for leave to defend, and, secondly, to then impugn the judgment and decree.
  
3. As it transpires, the Appellant was impleaded in the Suit as the Defendant No.2 in his capacity as a guarantor and mortgagor. The case sought to be advanced by him though the Appeal focuses on the dismissal of his Application for leave to defend, gravitating around the assertion that the delay in its filing was unintentional as the summons in the Suit had been issued at certain addresses at which the Appellant had ceased to reside and had only come to know of the matter when it was brought to the fore in Rent Case No.340/2016 that had been pending between him and the bank in relation to a tenancy dispute before the Court of learned 1<sup>st</sup> Senior Civil Judge & Rent Controller at Karachi (East), hence he was not at fault.
  
4. Learned counsel for the Appellant argued that a legal notice had been addressed to the bank on behalf of the Appellant in the context of that rent dispute, where a different address had been attributed to him, thus it was within the knowledge of the Respondent No.1 bank that he was no longer residing at the address mentioned in the Letter of Guarantee or Memorandum of Deposit of Title Deeds executed by him. Yet the Respondent No.1 had failed to mention that address for purpose of the Suit.

5. He argued that the Applications of the Appellant had been wrongly dismissed, and sought that the Order dated 06.02.2023 as well as the judgment and decree in the Suit be set aside and the matter be remanded for adjudication on merit.
  
6. Conversely, learned counsel for the Respondent No.1 argued that the case sought to be advanced by the Appellant was entirely fallacious and pointed out that even in the Affidavit sworn in support of the Appeal, the Appellant's address was the same as what was reflected in the title of the Suit.
  
7. We have heard learned counsel and examined the material on record. While doing so, we have observed that one of the addresses at which the summons was served, as set out in the title of the Suit, corresponds with the address mentioned in the Letter of Guarantee and the Memorandum of Deposit of Title Deeds, with publication having also taken place accordingly. On query posed to learned counsel for the Appellant as to whether any specific intimation had been given to the Respondent No.1 as to the Appellants departure from that address, he conceded that such a step had not been taken, but merely fell back on the plea that the Respondent No.1 ought to have made note of such fact through the correspondence addressed to it in relation to the rent proceedings. In our view that submission scarcely presents a cogent argument in the matter. Moreover, as pointed out, a perusal of the Affidavit sworn by the Appellant in support of the present Appeal reflects that his address remains the same as mentioned in the plaint.

8. Moreover, an examination of the Leave to Defend Application shows the same to be deficient as regards compliance of Sections 10 (3) and 10(4) of the Ordinance, which is mandatory in view of the judgment of the Supreme Court in the case reported as Apollo Textile Mills Ltd & others vs. Soneri Bank Limited PLD 2012 SC 268. Even otherwise, the said Application does not raise any dispute that may properly be qualified as being that of a substantial nature.
  
9. As such, no interference is warranted under the given circumstances. The Appeal is found to be devoid of merit and stands dismissed accordingly.

JUDGE

JUDGE

MUBASHIR