IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1st Civil Appeal No.D-38 of 2021

Present
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Arbab Ali Hakro

Appellants:	Shiv Oil Mill through Proprietor Through Mr. Ashok Kumar K. Jamba, Advocate
Respondent:	M/s National Bank of Pakistan, Through Fareed Ahmed Soomro, Advocate Mr. Ashfaque Hussain Abro, Assistant Attorney Gneral
Date of hearing:	21.12.2023
Date of Decision:	01.02.2024

JUDGMENT

Arbab Ali Hakro, J*:* Through this First Appeal under Section 22 of Financial Institutions (Recovery of Finance) Ordinance, 2001 (**'F.I.O.'**), the appellant has impugned Judgment dated 09.10.2021 and Decree dated 16.10.2021, passed by Banking Court-II, Sukkur (**'Banking Court'),** in Suit No.29 of 2020, whereby the said suit filed by M/S National Bank of Pakistan Ghotki Branch (**respondent-bank**) against M/S Shiv Oil Mill through its' proprietor and others (**appellants herein**) was decreed.

2. The relevant facts of the case are that the respondent-bank filed a recovery suit for a sum of Rs.36,452,472/- against the appellants before the Banking Court. In the plaint, it was stated that the appellants are customers of the respondent-bank, who availed finance facilities from them from time to time. Lastly, they

availed a renewed finance facility on 10.10.2018 for cash finance (Pledge) Oil limit amount of Rs.32.00 Million and a running finance (Hypothecation) limit amount of Rs.3.00 Million on a markup basis. The appellants, being owners and partners, mortgaged property bearing C.S. No.106/1, measuring 17424-00 Sq. Feet, situated in Deh Odharwali Tapo Ghotki near Jung road Taluka & District Ghotki. The appellants have failed to discharge their contractual obligation as per the finance agreement and could not pay the outstanding amount, becoming defaulters for an amount of Rs.36,452,472/- including markup and other charges, which was repayable on 31.12.2019. It is asserted that the respondent-bank approached the appellants for repayment/adjustment of the outstanding amount, but they kept them on false promises and finally refused, hence the suit in question was filed.

3. Upon receiving the notice, the appellant filed an application for leave to defend, asserting that the suit filed by the respondent-bank was hit by Section 9(2) and (3) of the F.I.O.; the amount shown in the Statement of Account is incorrect and does not tally with the amount shown in the plaint and they repaid total an amount of Rs.26,527,839/- to the respondent-bank. The aforementioned application was dismissed by the Banking Court vide order dated 09.10.2021. Consequently, the respondent-bank's suit was decreed as prayed for, hence this appeal.

4. At the very outset, learned Counsel representing the appellant contended that the impugned judgment and decree passed by trial Court is illegal, unlawful and unsustainable under the law. It is next argued that respondent-bank had filed suit for recovery of amount Rs.36452472/-, which is incorrect amount as per statement of account attached with memo of plaint. He next argued that the appellants deposited an amount of Rs.2,65,27,839/- with the respondent-Bank and such fact is also mentioned in the application filed under Section 10(2) (3) (4) & (5) of the Financial

Institutions (Recovery of Finances) Ordinance, 2001 for leave to defend but the same has not been taken into consideration by the trial Court and straightaway dismissed the same vide order dated 09.10.2021. It is further submitted that the Banking Court dismissed the appellants' claim solely on the ground that there is no denial with regard to availing financial facility, executing the finance agreement and mortgage deed; however, appellants' repaid the amount of Rs.26,52,7839/- but such aspect of the case has not been considered by the Banking Court while deciding the application for leave to defend. It was further argued that if the judgment and decree is not set-aside, the appellants shall be deprived of their valuable rights involved in the matter. Furthermore, learned Counsel for the Appellants 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. In support of his contention, he has placed reliance on the case laws reported as **2021 CLD 776, CLD 2006 217, 2014 CLD 985, 2014 CLD 153, 2016 CLD 609, 2006 CLD 1587 & 2006 CLD 127.**

5. Learned Counsel representing the Respondent, while supporting the impugned judgment and decree passed by learned trial Court, contended that the same is legal, lawful and warranted by law. So far contention of learned Counsel for the Appellants by declining leave to defend the suit is concerned, Appellants had failed to fulfill conditions specified in conditional order granting leave to defend suit, trial Court was justified in passing the decree against the Appellant; that as per contention of learned Counsel regarding repayment of amount with the Respondent-Bank; however they failed to produce any single payment receipt with their leave to defend application. In the end, he submits that instant 1st Civil Appeal, being devoid of merit, may be dismissed with costs and direct the Appellant to deposit surety as directed by learned trial Court. In

support of his contentions, learned Counsel has placed reliance on the case law reported as **2019 CLD 901, 2018 CLD 913, 2018 CLD 1036 & 2018 CLD 1451**.

6. We have heard the arguments advanced by the learned counsel for the parties and minutely perused the material available on record. In the application submitted by the appellants under Section 10 of F.I.O., they sought permission to defend themselves. They raised several questions of fact and law, alleging that the respondent-bank had filed a suit to recover Rs.36,452,472/-. However, they pointed out that the amount shown in the statement of account attached to the plaint did not match the amount stated in the plaint. They also claimed to have deposited an amount of Rs.26,527,839/- with the respondent-bank. Despite these submissions, the Banking Court did not agree with the appellant's position as outlined in their application for leave to defend, and as a result, the application was dismissed. The following is a reproduction of a portion of the order for reference:-

> *"It is matter of record that one father of Mukesh Kumar obtained the finance from the plaintiff bank which is not denied by the defendants. The defendant No.1 Mukesh Kumar filed the suit against the defendant bearing No.219/2019 Re:Mukesh Kumar Vs. N.B.P. and others but the same was withdrawn by the plaintiff through statement dated 19.6.2021. From perusal of record it also transpires that the applicants have not denied execution of finance documents including the mortgage deed in favour of the plaintiff bank produced by the plaintiff bank as annexure-c and the loan agreement documents produced by the plaintiff bank are also not denied by the defendants. So far as the plea of the defendants is concerned that they have repaid the amount to the plaintiff bank are concerned that they have not produced any single payment receipt with leave to defend application, on the contrary they have admitted the finance obtained by one late Mukesh Kumar. Perusal of the record also shows that the plaintiff bank submitted the bank account statement which also shows the repayments made in the finances which is duly certified by the bank officials. So far as the grievances of the defendants Mr. Khan Muhammad Bhutto (Branch Manager) are*

> *concerned, nothing creditable could have been brought on record by the defendants against the said Mr. Khan Muhammad Bhutto."*
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> *[Emphasis supplied, underlining is our for understanding]*

7. Upon close examination of the order, it becomes apparent that the Banking Court dismissed the appellant's claim, primarily focusing on the fact that the appellants did not deny availing the finance facility, executing the finance agreement, and the mortgage deed. As for the appellants' claim that they had repaid the amount, the Banking Court held that the appellants failed to produce any payment receipt along with their application for leave to defend. This lack of evidence led to the rejection of their application. Subsequently, on the same day, the Banking Court decreed the suit in favor of the Respondent-Bank. The Decree was articulated in the following words/terms:-

> *"After service of summons, the defendants appeared through their advocate Mr. Ashok Kumar, who filed application U/S 10(2)(3)(4) & (5) of the Financial Institutions (Recovery of Finances) Ordinance 2001 for leave to defend the suit, which was heard and the same has been rejected, vide order passed today, therefore, no alternate is left for the Court except to pass Judgment and Decree in favour of the plaintiff bank, as provided U/S 10(11) of the Financial Institutions (Recovery of Finances) Ordinance 2001.*
>
> *The claim of the plaintiff bank made in the plaint is supported by documentary evidence including certified copy of the statement of account. The plaint is verified on Oath. The plaintiff bank proved its case.*
>
> *Accordingly suit of plaintiff bank stands decreed against all the defendants jointly and severally for an amount of Rs.36452,472/- with costs of the suit as well as costs of funds to be determined U/S 3(2) of the Financial Institutions (Recovery of Finances) Ordinance 2001 till realization of the decreetal amount or in case of failure mortgaged property be sold by public auction and decreetal amount be adjusted from the sale proceeds thereof after deduction of costs of sale. Let the Decree be prepared accordingly within seven days"*

8. A thorough review of the Order and Judgment in question reveals that the Banking Court decreed the suit without delving into or elaborating on the points of fact and law raised in the

application for leave to defend. The Order and Judgment were passed without taking into account the documents available on record, giving the impression of a hasty decision without the application of a judicial mind to the facts and circumstances of the case. The Judgment lacks a detailed explanation, indicating a failure to deliver a speaking judgment. The Judge of the Banking Court did not attempt to reach a decision on the matters of fact and law. There appears to be a significant discrepancy between the amount shown in the plaint and the amount shown in the Statement of Account attached to the plaint. At this point, it would be pertinent to reproduce the details of the finance amount availed, its repayment, markup, and balance as shown in the plaint in tabular form below:-

Date of Finance	Amount Availed	Date of Repayment	Amount paid	Markup	Total Balance
23-10-2018	Rs.320,00,000	30-12-2019	Rs.41,21,113	Rs.13,76,682	Rs.33,323,177.08
23-10-2018	Rs.3,000,000	30-12-2019	Rs.4,06,726	Rs.129,295	Rs.3,129,295.07 **Rs.3,64,52, 472**

9. An in-depth review of the amounts presented in the plaint and the accompanying Statement of Accounts exposes a glaring discrepancy. For a finance amount of Rs.32,000,000/-, the plaint indicates a payment of Rs.4,121,113/- by the appellants on 30.12.2019, while the Statement of Account shows varying payments on different dates, resulting in a last balance of Rs.31,946,495/-. In contrast, the plaint states the balance amount as Rs.33,323,177/-. A similar discrepancy arises for a finance amount of Rs.3,000,000/-: the plaint records a payment of Rs.406,726/- made by the appellants on 23.10.2018, while the Statement of Account shows varying payments on different dates, leaving a balance of Rs.3,000,000/-. However, the plaint shows the balance amount as Rs.3,129,295/-. This stark difference in the amounts raises concerns about the Banking Court's thoroughness in examining the submitted documents and its failure to address

the appellants' substantial question of law and facts. The Statements of Account also contain discrepancies in the recording of payments and balance updates. While the statements reflect that payments were made on various dates, the balance amount remains unchanged without any explanation or indication of whether the payments were applied to reduce the principal amount or not.

10. In light of the glaring inconsistencies and contradictions presented in the case, it was imperative for the Judge Banking Court to thoroughly examine and deliberate upon these discrepancies before reaching a just and fair conclusion. Dismissing the application for leave to defend and hastily issuing a decree in favor of the Respondent-Bank without properly addressing these crucial discrepancies is a grave oversight that undermines the principles of justice and due process.

11. Notwithstanding, under the law, a judgment is not merely a conclusion, but a comprehensive document that must contain convincing reasons that justify the conclusion arrived at. It should include a concise statement of the case, the points for determination, the decision on each point, and the reasons for each decision. This reflects the judge's application of mind to resolve the issues involved. The Judgment should be a speaking, well-reasoned document that reflects due consideration of the facts, the law, and the contentions of the parties.

12. In the present case, the impugned Judgment and Decree passed by Judge Banking Court cannot be termed as a speaking judgment as he has failed to give any decision on points of facts and law agitated by the appellant, nor has he bothered to tally the detail of amount shown in the plaint and statement of account, which is one of the comprehensive document and should contain the entire history of the account containing credit and debit

entries in a chronological order. It is apparent that substantial questions of facts have been raised by the appellant, which need proper adjudication after summary inquiry. In Case of **Zeeshan Energy Ltd. and others v. Faysal Bank Ltd. (2014 SCMR 1048)**, it was held by the Supreme Court of Pakistan that:

> *"We may also note for the record that learned counsel for the respondent-Bank insisted that he had not been heard fully in respect of the five financial facilities set out in the Bank's plaint. This contention is misconceived. Once we have come to the conclusion that substantial questions of law and fact have been raised but have remained unanswered and that there is sufficient documentary as well as circumstantial evidence prima facie, to show that the allegations made by the appellants against the respondent-Bank are neither frivolous nor un-substantiated, leave to defend should be available to the appellants in C.O.S. 60 of 2001. We may add that the right of the respondent-Bank to prove its case is not being denied to it. Thus, it would have full opportunity of proving its case or disproving the allegations made against it by the appellants. Grant of leave to defend merely ensures that a right which is ordinarily available to all defendants as of right in all civil suits is not denied to defendants in Banking suits under the Ordinance if there are substantial questions of law and fact which have been raised by a defendant".*

13. For the foregoing reasons and discussion, the instant appeal is **allowed**, the impugned Judgment dated 09.10.2021 and Decree dated 16.10.2021 are set-aside, the application for leave to defend filed by the appellants is allowed, by way of grant of unconditional leave to appear and defend. The Judge Banking Court is directed to treat the application for leave to appear and defend as written statement, frame issues and direct the parties to lead evidence and decide the suit on merits, preferably within a period of 60-days from date of this Judgment.

JUDGE

Faisal Mumtaz/PS

JUDGE