

Judgment Sheet
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
1st Civil Appeal No.D-22 of 2021

Appellant : Muhammad Yousif Mahar,
Through Mr. Alam Sher Bozdar, Advocate

Respondent : ZTBL through Mr. Faheem Majeed
Memon, Advocate

Date of hearing : 14.11.2023
Date of Decision : 05.12.2023

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 10.4.2021 and decree dated 13.4.2021, passed by Banking Court-II, Sukkur (“**Judge Banking Court**”), in Suit No.260 of 2018, whereby the said suit filed by Zarai Taraqiati Bank Ltd (**respondent herein**) against legal heirs of deceased Saro(**appellants herein**) was decreed.

2. As per actualities accumulated from the record, the Respondent-Bank filed a recovery suit for Rs.847,065/- along with markup against the Legal heirs of Saro before the trial Court. It was the case of the Respondent-Bank that the father of the appellant had obtained a loan from them amounting to Rs.585,000/- for agricultural purposes under L.C No.146313 on 19.12.2013. The Respondent-Bank averred that in consideration of the grant of loan, the father of appellant executed and delivered to the Respondent-Bank the following charged documents: -

- i- Loan Agreement for Trade-Related Modes of Finance;
- ii- Charge creation Certificate and
- iii- Pass Book bearing No.347294.

The Respondent-Bank further alleged in the plaint that they provided the financial facility to the father of appellant, who also disbursed the same for Rs.99,000/- under G.L Head-9303 and Rs.486,000/- under G.L Head-9018 total Rs.585,000/- vide L.C No.146313 on 19.12.2013 and utilized the same. It is further averred that in continuation of the previous loan facility under the "Sada Bahar Scheme", the father of the appellant, on clearance of earlier liability, again availed the loan facility of Rs.486,000/- on 21.12.2013, under G.L Head-9018 and again on 23.01.2015. Lastly, the father of appellant deposited Rs.557,658/- under G.L Head-9018 and Rs.10,000/- on 31.8.2017 under G.L Head-9303. After that, he failed to adjust the loan up to Rs.847,065/-, which was outstanding against him. After the death of Saro, the legal heirs of Saro failed to discharge their contractual obligation; hence, Respondent-Bank filed a Suit.

3. The appellant, having been served, joined the proceedings by moving the application for leave to defend the suit on 30.10.2018. He admitted that his father had applied for a loan facility. However, he alleged that before disbursement of the loan, his father died on 26.9.2013, while the Respondent bank alleged the loan amount was disbursed on 19.12.2013. He further alleged that Respondent-Bank fraudulently managed the documents.

4. The Learned Trial Court proceeded to dismiss the application for leave to defend and, in consequence, whereof suit was decreed as prayed.

5. At the very outset, learned counsel representing the appellant contended that the impugned judgment and decree passed by the learned Banking Court is illegal and unlawful without mentioning proper reasons for decreeing the suit and without discussing or elaborating on the points of facts and law raised in

the application for leave to defend. He further submits that the impugned judgment & decree and the order dated 10.04.2021 dismissing the application for leave to defend were passed without considering the documents available on record, and it appears to have been done in hasty manner without applying a judicial mind to the facts and circumstances of the case; besides, learned trial Court gave undue favour to the respondent-bank by passing impugned judgment, which lacks detailed explanation, indicating failure to deliver a speaking judgment and the impugned order passed on application for leave to defend the suit under Section 10 (3) (4) & (5) of the Financial Institutions (Recovery of Finance) Ordinance, 2001. 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.

6. Learned Counsel representing the respondent, while supporting the impugned judgment and decree passed by the learned trial Court, contended that the same is legal, lawful and warranted by law. So far, the contention of learned counsel for the appellant for declining leave to defend the suit, he stated that the appellant had failed to fulfil conditions specified in the order granting leave to defend the suit; the trial Court was justified in passing the decree against the appellant; hence, such argument of learned counsel is not tenable in law. In the end, he submits that instant 1st Civil Appeal, devoid of merit, may be dismissed with costs and direct the appellant to deposit the outstanding amount as directed by the learned trial Court.

7. We have heard the arguments advanced by learned counsel for the parties and minutely perused the material available on record. In the application filed by the appellant under Section 10 of F.I.O seeking leave to defend, questions of facts and law were raised as it is alleged that before disbursement of the loan amount to his father by the

Respondent-Bank, his father died and had not received the sanctioned loan amount and in support of his claim he annexed the copy of Death Certificate of his father namely Saro. The Judge Banking Court, while dismissing the application for leave to defend the appellant, has observed as follows: -

“Having heard the learned counsel for the parties and after perusal of the record, it is surfaced during the course of arguments that the learned counsel for the applicant/defendant took plea that applicant/defendant was died on 26.9.2013 while he placed on record Photostat copy of the CNIC of the defendant No.1 Saro, on which the date of issuance is mentioned as 12.11.2013, while he took plea in the leave to defend application that the defendant No.1 (Saro died on 26.9.2013), hence how he can avail the loan which is said to have been disbursed on 19.12.2013. The plea is self contradicted as per the copy of the CNIC produced by the learned counsel of the defendant himself which bears the date of issuance dated 12.11.2013.....and as per case in hand, the death certificate bears the date 15.10.2018, whereas the date of death of the defendant No.1 is shown as 26.9.2013 which caste shadow upon the authenticity of the death certificate and things are most clear when the photo copy of CNIC of the defendant Saro was submitted by the learned counsel for the applicant/defendant himself which bears the issuance date viz: 12.11.2013. On one hand learned counsel for the applicant/defendant admitted the signature of the defendant No.1 on loan documents while in the same written statement/leave to defend application, took plea that the plaintiff bank fraudulently managed the loan documents. From perusal of the record it is very much clear that there are signatures of the defendant No.1 on loan documents, the Photostat copy of pass book is also bears the mortgaged entry in favour of the plaintiff bank. Under these circumstances, I do not find any merit in the instant application, the same are hereby rejected.”

8. The examination of the aforementioned order reveals that the Judge Banking Court dismissed the appellant's claim after considering two documents: the Death Certificate of the late Saro and his CNIC. The Death Certificate indicates that Saro passed away on 26.9.2013, yet his CNIC was issued later on 12.11.2013. According to the records, the loan was disbursed to the deceased on three separate dates: 19.12.2013, 21.12.2013, and 23.01.2015. After rejecting the application for leave to

defend, the judge of the Banking Court decreed the suit of the Respondent-Bank on the same day in the following words/terms:-

“After service of summons, the legal heir No.2 of deceased defendant appeared through his advocate Mr.alamSherBozdar, while filed application U/S 10 of the Financial Institutions (Recovery of Finances) Ordinance 2001 for leave to defend the suit alongwith application U/S 5 of the Limitation Act, which were heard and the same have 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 a certified copy of the statement of account. The plaint is verified on Oath. The plaintiff bank proved its case.

.....

Accordingly suit of the plaintiff bank stands decreed against the legal heirs of deceased defendant jointly and severally for an amount of Rs.832,065/- with costs of the suit as well as cost of funds to be determined U/S 3(2) of the Financial Institutions (Recovery of Finances) Ordinance 2001 till realization of the decretal amount or in case of failure agriculture land be sold by public auction and decretal amount be adjusted from the sale proceeds thereof after deduction of costs of sale. Let the decree be prepared accordingly within seven days.”

9. The review of the aforementioned judgment reveals that the Judge Banking Court decreed the suit without discussing or elaborating on the points of fact and law raised in the application for leave to defend. The judgment was made without considering the documents available on record, and it appears to have been done in a hasty manner without applying 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 Banking Court did not try to reach a decision on the matters of fact and law. There seems to be a discrepancy between the two documents. The Death Certificate for the late Saro lists his date of death as

September 26, 2013. However, his CNIC was renewed and issued on November 12, 2013. This discrepancy raises the question of the actual date of Saro's death. In this regard, the Respondent-Bank's plaint remains silent, wherein it is alleged that the late Saro last deposited return/markup on August 31, 2017. Since then, he has not made a single payment towards his loan liabilities during his lifetime. After his death, defendants No.2 to 4 (legal heirs, including the appellant) failed to deposit any amount. However, the Respondent-Bank did not submit any document, correspondence, or acknowledgement to the Judge Banking Court or this Court to confirm the exact date of Saro's death and to verify that the loan was disbursed to him and that he withdrew it during his lifetime. Specifically, a review of the Statement of Account and the contents of the plaint reveal that on a particular date, 19.12.2013, two loan amounts were approved and distributed to the deceased. Then, two days later, on 21.12.2013, another loan was approved and given to the deceased. A similar event occurred on 23.01.2015.

10. Under these circumstances, the Judge Banking Court should have conducted a thorough inquiry regarding the death of the deceased Saro or directed the parties to present evidence to support their respective claims to uncover the truth. This would have been a more appropriate course of action rather than dismissing the application for leave to defend and hastily decreeing the suit of Respondent-Bank.

11. Notwithstanding, under the law, a judgment must contain reasons that justify the conclusion arrived at, and those reasons should be convincing. More so, a judgment should have a concise statement of the case, points for determination, decision thereon, and reasons for each decision, manifesting application of mind by the judge to resolve the issues involved and same should be a speaking, well-reasoned judgment

reflecting due consideration of facts, law and contention 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 discussed that the loan amount was disbursed to the deceased Saro in his lifetime and that he withdrew the same. It appears substantial questions of law, facts and in respect of documents have been raised by the Appellant, which need proper adjudication after proper inquiry. In the Case of ***Zeeshan Energy Ltd. and others v. Faysal Bank Ltd. (2014 SCMR 1048)***, it was held by the apex Court 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 10.4.2021 and decree dated 13.4.2021, passed by Judge Banking Court are set aside, consequently; the matter is **remanded** to the Judge Banking Court, where suit and application for leave to defend shall be deemed to be pending, with direction to decide the same after conducting proper inquiry regarding death of deceased, execution of the documents in respect of finance and

disbursement of loan to the deceased as discussed supra, preferably within a period of two months from the receipt of certified copy of this order.

JUDGE

JUDGE