

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Present:
Muhammad Saleem Jessar
& Jawad Akbar Sarwana JJ

First Civil Appeal No.D- 03 of 2023

Ghulam Muhammad through his legal heirs

v.

Zarai Tarqiati Bank Ltd. and Others

Appellant: Ghulam Muhammad through his legal heirs, three sons: (i.) Seengar Ali, (ii.) Muhammad Punhal; (iii.) Shah Nawaz through Mr. Jai Kumar, Advocate.

Respondents: Zarai Tarqiati Bank Ltd. Islamabad through its Branch at Shahdadkot;

Respondent No.1: Suresh Kumar s/o Bakhshan Ram, Manager, ZTBL Shahdadkot Branch,

Respondent No.2: Nazir Hussain Jamali s/o Haji Ghazi Khan, AVP/Incharge Legal and Litigation Unit, ZTBL, Larkana Zone. Nemo.

Date of Order: 14.02.2024

Date of Judgment: 21.02.2024

J U D G M E N T

Jawad A. Sarwana, J: The Appellant/Defendant-Customer, Ghulam Muhammad (hereinafter referred to as “GM” and/or “LRs of GM” as the case may be), a customer of the Respondent/Plaintiff-Bank (“Zarai Tarqiati Bank Limited”)(hereinafter referred to as “ZTBL”), has filed this First Appeal No.D-03 of 2023 under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (hereinafter referred to as “the FIO, 2001”) against the Judgment dated 31.10.2023 and Decree dated 04.11.2023 passed against GM/LRs of GM by the Banking Court No.II at Larkana (‘the trial court’)

in Suit No.194/2021 in the sum of Rs.1,038,391/- plus cost of funds and cost of suit.

2. At the outset, the Court takes up two matters: first, the identity of “Seengar” impleaded as Defendant-Customer No.1(i.) in Suit No.194/2021 (Appellant No.1(i) of this Appeal) and the attorney “Ali Nawaz Bhatti” who has filed this Appeal on behalf of the LRs of GM, and, secondly, the identities/disclosure of all the legal heirs of GM, as it appears that all of the legal heirs have not been brought on record. From a perusal of the title page of the Plaint filed in Suit No.194/2021 by ZTBL,¹ it appears that at the time of filing of the banking suit under the FIO, 2001, by ZTBL against GM, the defendant-customer, the latter had already passed away. Accordingly, the bank impleaded as GM’s legal heirs (“LRs”) in the banking suit, all the three sons of GM, who were Adult, Muslim, and known to the bank as the legal heirs of defendant-customer, namely, Seengar Ali, age 25 years (Appellant No.1-(i.); Muhammad Punhal (Appellant No.1-(ii.), age 24 years; and, Shah Nawaz, age 18 years, (Appellant No.1-(iii.). The title of the First Appeal, D-03/2023, filed by these three sons as LRs of GM, confirms this position as reflected by the names of the three sons listed as co-appellants on the title page of this appeal. To this end, the contents of the First Appeal are verified and sworn by one Ali Nawaz (CNIC No.43406-0339806-7), describing himself as “Ali Nawaz @ Seengar Ali s/o Gul Muhammad @ Ghulam Muhammad.” The description suggests that “Ali Nawaz” is the same person as Appellant No.1-(i.), identified as “Seengar” in the title of the Plaint of Suit No.194/2021 and (Appellant No.1(i.) in the First Appeal No.D-03/2023. Finally, the Affidavit in support of the Application for Leave to Defend dated 24.11.2021 filed in Banking Suit No.194/2021 described “Ali Nawaz’ as “Ali Nawaz alias Seengar Ali s/o Ghulam Muhammad Bhatti.” Therefore, this bench assumes that “Seengar” and “Ali Nawaz” are the same person.

¹ Available on Page 27 of the Appeal File.

3. Appellant No.1(i)), Seengar Ali (Ali Nawaz Bhatti), has also sworn the Appeal based on an undated Special Power of Attorney bearing a date stamp of 09.09.2021.² The said Power states that Seengar Ali (Ali Nawaz Bhatti) is authorized to act on behalf of five (5) donors but does not mention Shah Nawaz (Appellant No.1-(iii.)). Several points emerge from the said Power: First, the five (5) donors have not included Shah Nawaz (Appellant No.1-(iii.)) as his name is not mentioned as a donor in the said Power in favor of Seengar Ali (Ali Nawaz Bhatti). Second, Shah Nawaz (Appellant No.1-(iii.)) has not authorized his brother, Seengar Ali (Ali Nawaz Bhatti), to file this titled appeal. Third, the five (5) donors of the Power indicate that GM did not have three sons only, but in fact, at the time of his death, GM was survived by a spouse/wife, two (2) daughters and four (4) sons as follows:

- (1) Wife: Mst. Ghulam Sakina w/o GM;
- (2) Daughter #1: Mst. Lashma Khatoon w/o Sardar Khan Bhatti;
- (3) Daughter #2: Shabiran Khatoon w/o Bashir Ahmed;
- (4) Son #1: Hasul Khan s/o GM;
- (5) Son #2: Muhammad Punhal s/o GM;
- (6) Son #3: Shah Nawaz s/o GM; and
- (7) Son #4: Ali Nawaz Bhatti (Seengar Ali) s/o GM.

4. The brief facts leading to the Appeal are that on 17.02.2017, GM availed finance facilities (LC No.172329) from ZTBL in two tranches: (i) a loan for seasonal inputs of Rs.550,000; and another loan for buffalos of Rs.300,000. The two loans totalled Rs.850,000. As security for the loan, GM mortgaged with ZTBL his several agricultural lands, as shown in the Pass Book No.354803, totalling 11-25 acres situated in Deh Kalar, Taluka & District Kumberp-Shahdad Kot, Sindh. The loans were to be returned by 07.04.2018 and 07.01.2022, respectively, but GM passed away in the interim

² Available on Page 79 of the Appeal File.

period, GM / the LRs of GM committed default in the repayment of the loan, and ZTBL filed a banking suit for recovery of Rs.1,165,027/- inclusive of Principal + Markup after adjustment of Rs.85,000 and Rs.65,000 repaid by GM. The application for leave to defend filed by the LRs of GM was declined, and ZTBL's Banking Suit was decreed.

5. The learned Counsel for the LRs of GM has contended that GM never availed the second finance. Further, ZTBL did not offer any finance. He explained that GM's CNIC had expired in the year 2017, and the Prudential Regulations for Corporate/Commercial Banks published by the State Bank of Pakistan mandated that withdrawals shall not be allowed until the account holder produces an attested copy of his CNIC and fulfils other formalities for activation of the account. He claimed that because the finance was availed by the Bank's Customer, when the CNIC had expired, therefore, the finance facility was void. He urged that ZTBL was not entitled to lodge any claim for such finance. Hence, the Banking Court should have allowed the application for leave to defend, so that the LRs of GM could prove their defence.

6. We have heard the learned Counsel, reviewed the record as available in the Appeal and read the Impugned Judgment and Decree.

7. We find no force in the contention raised by the learned Counsel for the Appellant/Customer-Defendants that as the CNIC of GM expired, he availed no loan and that this constituted a substantial question of law or fact to grant the application for leave to defend. The LRs of GM did not deny in their leave to defend application, that GM had repaid an amount of Rs.85,000 towards the loan for seasonal output and Rs.65,000 towards the loan for buffaloes. The Prudential Regulations cited and relied upon by the LRs of GM pertained to the operation of the customer's bank account and even otherwise are directory. There was no denial that ZTBL did not disburse the finance. The LRs of GM hid/have hidden behind an expired CNIC but they

cannot deny that GM had accepted the finance by his conduct. After he had started to repay the finance, GM could not turn around and walk away from his obligation, which he was bound to fulfil. Even if it is assumed that the CNIC was expired, the matter was a mere oversight and it could be cured by GM providing a valid CNIC. The fact identified by the LRs of GM in their Application for Leave to Defend did not constitute a substantial question of law or fact to grant their leave to defend. The alleged oversight by ZTBL could not bring down the entire finance, which had been disbursed and availed by GM and the LRs of GM. If there was no loan against mortgage disbursed to GM then there was neither any compulsion nor pressure on GM to repay the loan/finance availed by him. Yet GM made part payment of the loan to ZTBL inspite of an expired CNIC. The defence the Counsel for LRs of GM put forward in the leave to defend application miserably failed to raise substantial questions of fact or law and was rightly rejected by the Banking Court.

8. We do not find that the learned trial court Judge has fallen into any error or passed the impugned judgment and decree contrary to law as against Appellant Nos.1(i.) to (iii.). Further, the LRs of GM to the extent of Appellant Nos.1(i.) to (iii.) raised no substantial question of fact or law in the leave to defend application filed in the banking suit.

9. As discussed earlier in this Judgment, it appears that Shah Nawaz s/o Ghulam Muhammad (Appellant No.1(iii.))(Defendant No.1(iii.)) has not preferred any appeal against the impugned Judgment and Decree. He did not authorize his brother, Seengar Ali (Ali Nawaz Bhatti), to file any appeal against the impugned Judgment and Decree. Therefore, he has accepted the impugned Judgment and Decree, which has attained finality against him (Shah Nawaz).

10. Without prejudice to the foregoing, it transpires that ZTBL proceeded to file Banking Suit No.194/2021 in Banking Court No.II at Larkana against some (three of the sons of GM) and not all the legal

heirs of GM as per the names of the LRs of GM disclosed by Ali Nawaz Bhatti (Seengar Ali)(Appellant No.1(i.)) in the Power of Attorney dated 09.09.2021 attached to this appeal.³ It is clarified that the impugned Judgment and Decree may not be enforced against those LRs of GM who were not impleaded in Banking Suit No.194/2021 and have not been given an opportunity of a hearing, notwithstanding that any claim of LR on the land of GM will be subject to the first lien (mortgage) of ZTBL.

11. In view of the above, the impugned Judgment dated 31.10.2023 and Decree dated 04.11.2023 passed by the Banking Court No.II at Larkana in Suit No.194/2021 against Appellant Nos.1(i.) to (iii.) are proper and based on facts and law. They do not suffer from any illegality that calls for interference. **Accordingly, the impugned Judgement and Decree are hereby confirmed in the terms stated herein, and the First Civil Appeal No.D-03/2023 is dismissed in liminie.**

J U D G E

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³ Available on Page 79 of the Appeal File