

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Before:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Jawad Akbar Sarwana

1st Civil Appeal No. S-02 of 2022

Safdar Ali s/o Sikandar Ali Jalbani

v.

Zarai Taraqati Bank Limited

Appellant	:	Safdar Ali s/o Sikandar Ali Jalbani through Mr. Abdul Rehman A. Bhutto, Advocate
Respondent	:	Zarai Taraqati Bank Limited of Pakistan through authorized person, Allah Bux Junejo, Incharge Legal & Litigation Unit, ZTBL Larkana through Mr. Niaz Ali Ansari, Advocate Oshaque Ali Sangi, Asstt. Attorney General
Date of Hearing	:	21.02.2024
Date of Judgment	:	26.03.2024

J U D G M E N T

JAWAD AKBAR SARWANA, J.: The Appellant, Safdar Ali Jalbani ("SAJ"), a customer of the Respondent, Zarai Taraqati Bank Limited ("ZTBL"), has filed this 1st Civil Appeal against the impugned judgment dated 20.01.2020 and decree 21.01.2022, passed by Banking Court-I, Larkana Division in Banking Suit No.162/2021 dismissing the Application for Leave to Defend filed by SAJ under Section 10 of the Financial Institutions (Recover of Finances) Ordinance ("FIO"), 2001.

2. The brief background of the case is that SAJ availed finance from ZTBL, securitized by a mortgage over SAJ's properties. SAJ defaulted on his payment obligation, leading ZTBL to file a suit for recovery of

finance under Section 9 of the FIO, 2001. SAJ filed an Application for Leave to Defend, and after hearing the parties, the learned Judge of the Banking Court dismissed the said Application and passed the impugned Judgment and Decree.

3. The learned Counsel for SAJ submitted a copy of the loan application under the cover of a Statement dated 21.02.2024, which was taken on record. He submitted that, as per these papers, the loan was advanced to SAJ in the year 2017, but ZTBL claimed the charge for the period pertaining to the year 2016. Therefore, ZTBL cannot claim the same for the period not availed by him. He further argued that the Banking Court dismissed his Application for Leave to Defend, and judgment was announced on the same day, which resulted in SAJ being unable to adduce evidence and defend the suit. Hence, the exparte Judgment may be set aside, and the case may be remanded to the trial Court.

4. The learned Counsel for ZTBL opposed the appeal on the ground that after the pronouncement of the alleged exparte judgment, the execution proceedings have been initiated by the Bank; therefore, at this juncture, remand of the case would be a waste of time.

5. We have heard the learned Counsels for both parties and the Assistant Attorney General and perused the appeal file and the R&P of Banking Suit No.162/2021.

6. After ZTBL filed its banking suit against SAJ, the latter was required to raise substantial questions of law or fact in its Application for Leave to Defend, failing which the Banking Court would pass judgment and decree against SAJ. We have perused the Leave to Defend application and note that SAJ miserably failed to raise his defence in terms of Section 10(4) of FIO, 2001, which required him to expressly set out the amount of finance availed by him, the amounts paid by him to

ZTBL, identify the amount actually payable, identify the disputed amount, etc. The application filed by SAJ was silent on all these points.

7. We have examined the Plaint and the supporting documents filed by ZTBL, including, inter alia, the Statement of Account duly verified under the Bankers Books Evidence Act, 1891. According to the Statement of Account, the finance was disbursed to SAJ's bank account on 15.03.2017 in the sum of Rs.500,000. This opening entry is reflected in the Statement as the first credit entry. There is no carry forward entry in the account, negating Counsel for SAJ's submission that ZTBL was claiming finance advanced in prior years. Therefore, SAJ's plea that the banking suit pertained to the finance of previous years carries no weight.

8. The learned Counsel of SAJ's second argument that the dismissal of the leave to defend application and the passing of the judgment and decree on the same date constituted an irregularity has no legs to stand. Section 10(12) of FIO, 2001 clearly states, in no uncertain terms, that where the application for Leave to Defend is rejected or where a defendant fails to fulfil the conditions attached to the grant of leave to defend the Banking Court shall forthwith proceed to pass judgment and decree in favor of the Plaintiff and against the Defendant. Accordingly, in the instant banking suit, when the Banking Court rejected SAJ's Leave to Defend application, it was well within its powers to pass judgment and decree in ZTBL's Banking Suit No.162/2021.

9. We are satisfied that the impugned Judgment dated 20.01.2022 and Decree 21.01.2022 have been passed on proper appreciation of facts and law. The learned Single Judge did not make any error while passing the impugned Judgment and Decree, which requires interference. Accordingly, the 1st Appeal No.D-02/2022 is dismissed. The parties are left to bear their own costs.

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