

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

I.A No.187 of 2017

Present:

Yousuf Ali Sayeed and
Arbab Ali Hakro, JJ

Muhammad Siddiq Mirza.....Appellant

Versus

M/s. Standard Chartered Bank Ltd.
and others Federation of Pakistan &.....Respondents

Muhammad Siddiq Mirza, Appellant, in person.
Ghulam Rasool Korai, Advocate, for the Respondent No.1.

Date of hearing : 13.09.2024

ORDER

YOUSUF ALI SAYEED, J. - The Appellant has preferred this Appeal under Section 22 of the Financial Institution (Recovery of Finances) Ordinance 2001 (the “**Ordinance**”), impugning the Judgment dated 25.07.2017 and Decree dated 16.08.2017 of the Banking Court No. II at Karachi in Suit No.318 of 2010 instituted by him seeking Declaration, Rendition of Accounts, Recovery, Damages and Injunction against the Respondents, with the Court recording a finding that it lacked jurisdiction in the matter as the substance of the claim advanced did not fall within the parameters of the Ordinance, so as to return the plaint.

2. The backdrop to the matter is that the Appellant has filed the Suit stating that an auto-finance facility had been obtained by him from the Respondent No.1 in September 2003 in respect of a Suzuki Cultus, bearing Registration No. AFE-242, on account of which he made all repayments over the five-year period of the finance but that when he had approached the Respondent No.1 for a No Objection Certificate/Letter for purpose of transfer of vehicle upon completion of the tenure of in 2008, no response was forthcoming. It was pleaded that the Respondent No.1 had made an unlawful attempt to repossess the vehicle on 23.12.2009 through the other Respondents, which was thwarted, but certain personal items and jewellery worth Rs.500,000/- were removed from the vehicle during the course of such attempt. As such the Suit was brought on account of damages for breach of a contract as well as for mental torture, and recovery of such items with it being prayed that the Court be pleased to:

1. Declare that Officials of Defendant No.4 has failed to discharge their legal obligation to protect the life, liberty and property of Plaintiff.
2. Declare that Plaintiff has paid complete rentals and direct the Defendants to issue no objection certificate and perform other actions which are required for effectual discharge of contractual obligation in respect of Vehicle Suzuki Cultus AFE-242.
3. Pass judgment and decree for Rs.500,000/- being cost of goods / Articles laces.
4. To pass a judgment decree of money in shape of damages in favour of Plaintiff against the Defendant @ Rs.300,000/- per annum till final disposal of this suit alongwith future mark-up at the prevailing Bank rates.
5. To pass judgment / Decree in favour of Plaintiff against the Defendants interim Decree of one million thereafter a rotating money decree on the basis of vehicles fluctuation in prices and value depreciation at the time decree and till final payment.

6. To restrain the Defendants their agents, servants from taking possession from the Plaintiff of Vehicle No.AFE-242 Suzuki Cultus white color in any manner whatsoever.
 7. Grant cost of the Suit.
 8. Any other relief this Hon'ble Court may be deems fit.”
3. The Respondent No.1 filed its application for leave to defend, which was allowed, whereafter proceeded with the Court framing the following issues:-

- “1. Whether this Court has jurisdiction to entertain the above suit?
2. Whether the suit is barred by law?
3. Whether the defendant Bank in violation of BPRD Circular No.13 of 2008 has made three attempts for repossession of vehicle?
4. Whether the defendants are liable to pay an amount of Rs.500,000/- to the Plaintiff for stealing of valuable goods out of the vehicle?
5. Whether the Plaintiff is liable to pay an amount of Rs.237,867.73 to the Defendant No.1 in respect of Finance Facility of vehicle Civic VTI bearing Registration No. AEM-955 and an amount of Rs.310,705.05 in respect of Finance Facility of Vehicle Suzuki Cultus bearing Registration No.AFE-242?
6. Whether the Defendants are liable to compensate the plaintiff in shape of damages for violating the terms of Lease Agreement as well as BPRD Circular No.13/2008 as well as undertaking given by defendant Bank before Hon'ble High Court in C.P No.781/2008.
7. What should the decree be?”

4. Thereafter, following the evidentiary exercise, the Court entered a finding in the negative on Issue No.1, with it consequently being held that Issues Nos.2-6 therefore required no further discussion and Issue No.7 being decided so as to return the plaint for its presentation before the Court of competent jurisdiction.

5. Under the given circumstances, the point arising for determination is a jurisdictional one, entailing a determination as to the propriety of the Banking Court's finding regarding its jurisdiction and competence vis-à-vis the subject matter of the Suit.

6. Having considered the matter, we are constrained to find that the Banking Court fell into error in delivering its finding on Issue No.1, if for no other reason than that Prayer Clauses 2 and 4, co-relatable with Issues Nos. 5 and 6, fall within the jurisdiction and competence of the Banking Court and necessarily required determination.

7. In the case reported as Citibank N.A v. Syed Shahanshah Hussain SBLR 2009 Sindh 1290, it was observed by a learned Division Bench of this Court as follows:

“Now advertent to the argument of Appellant's counsel that the Banking Court is not empowered under the Financial Institutions (Recovery of Finances) Ordinance, 2001 to award compensatory cost on account of Personal injury, we do not agree with this argument as well. No doubt, the scope of Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 is limited only to such suits where a default in the fulfillment of any obligation in relation to a finance has been committed but this does not

mean that no claim at all for damages which is based on personal injury could be agitated before a Banking Court. A personal injury could arise on account of default in fulfilment of any obligation in relation to finance and an aggrieved party may claim damages as well. A claim for damages i.e. a claim for seeking pecuniary compensation is a relative term. Such a claim may arise on account of inquiry or loss caused by one to the other by commission of tort or by breach of a contractual obligation. The claim for damages caused on account of commission of tort or by breach of a contract which has nothing to do with the default in the fulfilment of an obligation arising from a financial facility and covered under the definition of “finance” as provided in Section 2 (d) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 obviously cannot be agitated before a Banking Court. However, a claim for damages, on account of any injury or loss caused by a Financial Institution to its customer, which has resulted from any default committed by the Financial Institution in the fulfilment of its obligation in relation to finance, can certainly be taken to the Banking Court for adjudication. Hence, a claim for pecuniary compensation could either arise from a tortuous act i.e. not based on any contract or a breach of a contractual obligation not pertaining to an accommodation or facility of finance as defined under Section 2 (d) of the Financial Institutions Recovery of Finances) Ordinance, 2001 and for these two categories of claims obviously the Banking Court is not the appropriate forum. However, a claim for pecuniary compensation could also arise on account of the failure of a Financial Institution to fulfill its obligation in relation to any financial accommodation or facility. It is this category of claim which certainly comes within the scope of Section 9 of the Ordinance and a suit relating thereto is always maintainable before a Banking Court. Therefore, there is no force in the first argument of Appellant’s counsel.”

[Underlining added for emphasis]

8. Such claims as were considered to fall outside the ambit and purview of the Ordinance could have been struck-out, with the remaining claims then proceeding for determination on merits. We are fortified in that regard by a judgment emanating from the Lahore High Court in the case reported as Messrs. M.M.K Rice Mills v. Grays Leasing & others 2006 CLD 1147, where such a course was followed.

9. In view of the foregoing, the Appeal stands allowed with the impugned Judgment being set aside and the matter being remanded to the Banking Court for reconsideration and decision afresh after hearing the parties.

JUDGE

JUDGE