

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Ist. Appeal No.12 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of CMA-2365/18 (exemption)
For hearing of main case.

Present:-

Mr. Justice Muhammad Faisal Kamal Alam.

Mr. Justice Khadim Hussain Soomro.

06.11.2024

Mr. Aamir Ali Memon advocate for Appellant.

Despite service, no one is present on behalf of the Respondent.

ORDER

Muhammad Faisal Kamal Alam J:- This Appeal is filed against the impugned Order dated 20.02.2018, whereby Suit No. 54 of 2016 filed by the Appellant for declaration and damages was dismissed on the ground of limitation; while observing that the Appellant does not fall within the definition of 'Customer' as defined under Section 2(c) of the Financial Institutions (Recovery of Finances) Ordinance, 2001- **the Banking Law.**

2. Learned Counsel has stated that the Appellant was the Auction Purchaser, who participated in the auction proceeding, arising out of a Banking Suit filed by the Respondent against its Customer [Banking Suit No. 3 of 2010], and purchased the CNG Station. However, First Appeal No. 39 of 2010 filed by the Customer-Qalandari Filling CNG Station, was allowed, and the Judgment of the Banking Court was set aside. In the said Judgment dated 31-5-2011,[at Page 39 of the LIS File], the learned

Division Bench of this Court also made an observation with regard to the present Appellant, who was impleaded as Respondent No.3.

3. Since the transaction was cancelled and repossession was ordered, then, subsequently, on an Application filed by the present Appellant in the above Appeal, the Order dated 23.12.2014 [at Page-91] was passed, *inter alia*, directing the Appellant to deposit the Sale Deed of the Subject Property [Petrol station/ CNG Station] for cancellation and in return, the amount of Rs.9,819,487/- had to be released back to the Appellant. Contended that the compliance was made, but the amount was returned after four (04) years, due to which the Appellant suffered damages, resulting in instituting F.C. Suit No.54 of 2016, which met the fate discussed above, through the impugned Order; contended that for the other reliefs, another Suit was earlier filed, which is 82 of 2011, in which, the learned Banking Court-II, Hyderabad passed the Order dated 04.09.2018 [Filed under the Counsel's Statement today], for return of Plaint, under Order 7 Rule 10 of CPC, which was subsequently filed before the learned Ist. Senior Civil Judge, Hyderabad and the matter is at the stage of evidence; although in the subsequent Suit, same order should have been passed, instead of dismissing the same with the above observation, which is self-contradictory. Cited a case reported as 2013 CLD 511- AL-BARAKA BANK [PAKISTAN] LIMITED *versus* Raja ASHFAQ HUSSAIN.

4. During the argument, he has referred to the Objections filed by the Respondent in the present Appeal, which has been perused.

5. In the Para wise Comments/ Objections, although the Respondent, has opposed this Appeal and prayed for its dismissal, but, in Paragraphs 3 and 6, it is stated that the relationship between the Appellant and the Respondent is neither of 'Customer' and 'Financial Institution', nor, the transaction involved fall within the ambit of 'Finance Facility' as envisaged under Section 2 (d) of the Banking Law.

6. We have perused the Judgment cited [*supra*], in which the Respondent was also an auction purchaser, whose bid was not accepted and for the recovery of the amount, he had instituted a suit before the Banking Court, which was decreed; challenged by the Financial Institution [Bank] in an appeal. The learned Division Bench held, that the plaint should have been returned, as the relationship and transaction in question did not fall within the scope of the aforementioned statute- Banking Law.

7. The above reported Judgment is relevant to the facts of the present case. Undisputedly, the transaction in question and the relationship between the present Appellant and Respondent is neither a 'Finance' nor 'Customer' [respectively, as defined in the Banking Law, *ibid*]. Interestingly, but, surprisingly, the same is also observed in the impugned Order, yet, the learned Banking Court dismissed the Suit [No. 54 of 2016] on merits, although it did not have jurisdiction to decide the above **Lis** in terms of the Banking Law. The impugned Order is also self-contradictory, in view of the above discussion. The proper course should have been to return the plaint, as was done in the earlier Suit No. 82 of 2011. The impugned Order is illegal and without jurisdiction, thus, cannot be sustained; consequently, it is set aside, and the plaint is directed to be returned and to be filed in the Court of competent jurisdiction before the learned Ist. Senior Civil Judge, Hyderabad. The above Suit will be tagged with the earlier Suit No.82 of 2011, re-numbered as 1232 of 2018. However, the learned Trial Court cease of the matter can decide the maintainability issue and all other issues on merits. This Decision will not come in the way of the learned Trial Court if it decides the maintainability issue first.

JUDGE

JUDGE