

(189)

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

1st Civil Appeal No. D-03 of 2020.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For Hearing of CMA No.151/2020 (S/A)
3. For hearing of main case.

23.09.2020.

Appellant: Muhammad Anwar @ Anwar Ali through Mr.Syed Tahir Abbas Shah, Advocate

Respondents: Zarai Tarqiyati Bank Limited of Pakistan through Mr. Ali Nawaz Junejo, Advocate.

Through this Appeal under section 22 of the Financial Institutions (Recovery of Finance Ordinance) 2001, the Appellant has impugned judgment and decree dated.10.02.2020, passed by the Banking Court No.-I, Larkana Division at Larkana, in Suit No.70 of 2019, whereby the suit filed by respondent has been decreed in the sum of Rs.926,768/- along with cost and cost of funds in accordance with law till the realization of the said amount. In addition, an attempt has also been made to impugned the order whereby leave to defend application of the Appellant was dismissed.

Learned counsel for the Appellant submits that the learned Banking Court on consideration of the objections in the leave to defend application ought to have granted unconditional leave so as to thrash out the real facts in the matter; that the learned Banking Court has failed to take notice of the fact that the amount sanctioned and disbursed was not a total of Rs.6,45,000/- but instead was Rs.400,000/- and such objection was raised in the leave to defend application; that the disbursement has not been made in the account of the plaintiff but to someone else, and therefore per learned counsel, the appeal merits consideration and the same be allowed by setting aside

the impugned order and allow the leave to defend application enabling the Appellant to contest the suit.

On the other hand, learned counsel for the respondent Bank submits that the amount was sanctioned and disbursed as claimed; proper mortgage was created and a default has been committed, whereas, no supporting document has been brought on record to substantiate the claim that only Rs.400,000/- was sanctioned and disbursed.

We have heard both the learned counsel and perused the record.

Insofar as the leave to defend application and the order of dismissal is concerned, on perusal of the same, it appears that apparently no case for grant of such leave to defend was made out inasmuch as the availing of finance facility was not disputed and it is only the sanctioned/disbursed amount which was disputed. It would be advantageous to refer para-6 of the leave to defend application which reads as under:

"06. That, the Contents of Para No.06 are also denied. It is denied that the loan of amount of Rs.645000/- was sanctioned or handed over to the defendant, but in fact the defendant was sanctioned loan of Rs.400,000/- It is further submitted that the received loan was to be returned by the defendant within due date, but on the contrary during the year 2017 the defendant sustained huge loss due some agricultural disease in the paddy crop, hence unable to pay the loan and during the season of 2018 there was shortage of irrigation water in the area and whole District Kamber-Shahdadkot was affected, where the land of defendant is located, hence the defendant could not cultivate the land, therefore unable to pay the loan amount."

Perusal of the above stance reflects that it was contended by the Appellant that the sanctioned amount was Rs. 400,000/=; however, while confronted, learned counsel for the Appellant was not able to refer to any supporting document to substantiate this claim. On the other hand, the record placed before this Court including the Bank Statement clearly reflects that the said amount was disbursed in two

different transactions that is Rs.475,000/- and Rs.170,000/-. Moreover, through objections, the respondent Bank has also placed on record copies of cross cheques bearing No.6490613 dated.25.11.2016 for Rs.475,000/- and Cheque No.6490614 dated.25.11.2016 for Rs.170,000/-, issued in the name of the Appellant and being credited in his account. In these circumstances, the contention appears to be misconceived and incorrect as availing of the finance facility and creation of charge and the mortgage of property has not been seriously disputed.

Insofar as the argument that the account statement pertains to someone else having CNIC No.4340203663671 is concerned, though no such objection was raised in the leave to defend application and cannot be a ground in this appeal; however, without prejudice, and notwithstanding, the same also appears to be misconceived and an afterthought. Record reflects that this CNIC Number is of the father of the Appellant as reflected from the sanction advice and the loan application, and perhaps mistakenly mentioned in the account statement. Once cheques were issued and duly credited then this objection even otherwise is not sustainable.

In view of hereinabove facts and circumstances of this case, it appears that after availing the finance facility the Appellant has defaulted and hence the impugned Judgment and decree has been correctly passed; this appeal fails and is hereby dismissed.

M Y Panhwar/**