

Judgment sheet
IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

I-Appeal No.115 of 2023

(Moosaco & others **vs.** Standard Chartered Bank (Pakistan) Limited)

I-Appeal No.116 of 2023

(Moosaco & others **vs.** Standard Chartered Bank (Pakistan) Limited)

I-Appeal No.117 of 2023

(Moosaco & others **vs.** Standard Chartered Bank (Pakistan) Limited)

Date of hearing: 15.04.2025 & 17.04.2025
Date of Judgment: 25.04.2025

Mr. Muhammad Ali Ganghro, Advocate for Appellant
Mr. Fahim Iqbal, Advocate for Respondent

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J:- These appeals call into question judgments dated 30.10.2023 and decrees drawn on 11.11.2023 passed by the Banking Court No.III at Karachi in Suit Nos.77, 78, & 79 of 2021 filed by respondent (Standard Chartered Bank (Pakistan) Limited). The Suits were filed for recovery of different amounts i.e. Rs.38,305,239.25/-, Rs.41,132,409.06/- & Rs.40,570,450.48/- from defendants / appellants respectively along with cost of funds, U/s 9 of Financial Institutions (Recovery of Finances) Ordinance, 2001 ('**FIO, 2001**').

2. The facts as stated in the plaints are that the appellants were granted different finance facilities on the terms and conditions embodied in the offer letters. The finance facilities were secured by creation of equitable mortgage u/s 58(a) of the Transfer of Property Act, 1882 over the property of the appellants in their personal capacity. Being mortgagor, they executed a memorandum and deposited title deeds in respect of their immovable property and delivered the original documents to the Bank. Initially the defendants/appellants made regular payments but then defaulted. When approached, they assured the bank of consistent payments in future but to no avail. Hence, the suits were filed with all the material details mentioned in the plaint as envisaged u/s 9 of FIO, 2001.

3. On being summoned, the defendants appeared and filed applications for leave to defend the suits but they were dismissed vide order dated 02.09.2023. Consequently, respondent/plaintiff was examined, he produced all the necessary documents including statements of accounts, break up of liabilities in terms of finance facilities, the principal amount availed, the amount payable by the

appellants / defendants and the principal amount outstanding against them and outstanding rental amount including liquidated damages. Finally, through the impugned judgments and decrees the suits of the plaintiff/respondent have been decreed to the extent of principal amount and cost of the funds till realization of the decretal amount. Besides, the costs of the suit have also been granted to the plaintiffs. The plaintiffs have also been allowed to sell the mortgaged property, in case the appellants fail to pay the decretal amounts, hence, these appeals.

4. We have heard learned counsel for the appellants. He has argued that the very suits were not maintainable for want of compliance u/s 9 of FIO, 2001; that the documents submitted by the respondents viz. statements of account, break up of account and other documents were not certified under Bankers' Book Evidence Act, 1891, hence, the suits were liable to be dismissed; that the learned Banking Court has not appreciated the grounds taken by the appellants in leave-to-defend applications; that the Banking Court has not appreciated the facts that no amount was outstanding against the appellants and they had already paid the entire outstanding amount; that the plaintiff's bank had filed the suits in violation of the mandatory provisions of clause-B(3) of section 9 of FIO, 2001.

5. On the other hand, learned counsel for the respondent bank has supported the impugned judgment and has drawn our attention to section 10 of FIO, 2001 to state that the applications for leave to defend the suits were without necessary details, as required, hence, they were not maintainable and rightly dismissed.

6. We have heard the parties and perused material available on record including the orders dated 02.09.2023 whereby applications for leave to defend the suits were dismissed by the Banking Court. Before us, essentially, the appellants have raised the grounds, firstly, the suits were not maintainable for want of requirement u/s 9 (3) (b) of FIO, 2001 in that the statements of account and other documents were not certified under the Bankers' Book Evidence Act, 1891 and therefore, the appellants were not required to give necessary details in their applications for leave to defend the suit, and further, the appellants have paid all outstanding amounts. However, on scrutiny, it is found, they have not produced any evidence to show that they have paid to the bank all outstanding amounts, nor any such information has been detailed by them in their applications for leave to defend the suits. Then, one of such grounds, taken by the appellants in their applications for leave to defend the suits, was replied by the learned Banking Court in following manner:

“However, it is observed that the said Statement of Accounts of the defendants' company is duly certified as per the provisions of Bankers' Books Evidence, Act

1891. Hence, it is a prima facie evidence of existence of such entries of transactions in the Books of Accounts of the Plaintiff and their genuineness is not questionable. The actual amounts availed and the repayments made by the defendants are reflected in the debit and credit entries, wherein none of the debit entries had been identified by the defendants to be erroneous. Even, otherwise, the said statement of accounts is an electronically generated document.”

7. In addition, it may be said that we have found that the plaints contain all the necessary details as required u/s 9 of FIO, 2001 viz. the amount of finances availed by the respondents, the amounts paid by them and the amounts payable by them to the bank. Learned counsel by referring to an order dated 08.12.2022, which purportedly calls upon the plaintiff bank to submit a statement of account as per provisions of Bankers’ Books Evidence Act, 1891 has submitted that because of such delinquency, appellants were entitled to leave to defend the suits. However, we do not agree with such argument because the leave to defend the suit is contingent upon fulfillment of requirements u/s 10(3) and (4) of FIO, 2001, which the appellants palpably failed to oblige. The Banking Court while dismissing the application for leave to defend the suit has observed on this point as under:-

“A perusal of the contents of application for Leave to defend reveals that the same has not been filed strictly in accordance with the provisions of Section 10 Sub-Section 3 & 4 (a), (b), (c) and (d) as well as Sub-Section (5) & (6) of F.I.O, 2001, which are mandatory in nature. The defendants have not produced any documentary evidence and no triable issues are involved in the suit for which evidence is required to be recorded. On the contrary, the defendants have admitted about the outstanding liability as well as contractual obligations. In fact, they are making an attempt to escape from their contractual liabilities, therefore, taking frivolous, baseless and unwarranted stances so as to misguide this Court and drag the matter.

As per Section 10 (4) of F.I.O, 2001, the defendants were required to disclose in their application for leave to defend the suit, the amounts of finance availed, repaid to Plaintiff Bank alongwith the dates of payments, other amounts payable to Financial Institution upto the date of institution of suit and amounts, if any, disputed by them as payable to Financial Institution and facts in support, thereof. Instead of doing so, the defendants have evasively denied the statement of accounts as well as commission of default on their part, without any solid basis and proof. The defendants were required U/s 10 (6) of F.I.O, 2001 to file all such documents alongwith their application for leave to defend the suit, which in their opinion supported purported questions of law or facts. But, they have failed to comply with the provisions of Section 10 (3), (4) and (6) of the F.I.O, 2001.”

The above discussion shows that the appellants miserably failed to strictly observe provisions of section 10(3) & (4). They did not produce any documentary evidence supporting contents made by them in their applications for leave to defend the suits, did not bring in any material substance setting up triable issues, nor any details leading to substantial questions of law or facts to justify the trial between the parties was set up by them. Except blankly denying and disputing the amounts presented through the statements of account duly certified under the provisions of Bankers’ Book Evidence Act, 1891, nothing persuasive and substantial was produced by the appellants to lean an opinion in their favour.

8. We have seen that learned Banking Court after attending to every aspect of the facts and grounds taken in applications for leave to defend the suits and discussing them thoroughly had rejected the applications. Learned counsel for the appellants has failed to show any error in the findings therein except that since a short order dated 08.12.2022 shows statements of account were not produced as per provisions of Bankers' Books Evidence Act, 1891, at least the leave to defend the suits should have been granted to the appellants. Contrary to it, not only the orders dismissing the applications for leave to defend the suits but also the impugned judgments show that the evidence produced in the Court was certified under the Bankers' Book Evidence Act, 1891 and *prima facie* there was nothing to be construed as violation of section 9 of FIO, 2001.

9. Notwithstanding, if there was any *lacuna* at the time of filing of the complaints, it seems, it was taken care of and the mistake rectified. Even otherwise, the simple fact that there was some bonafide error in presenting the complaint before the Court at the first instance will not make entire claim of the plaintiff bogus or unworthy of adjudication, or justify allowing leave to defend application, which is exclusively contingent upon fulfillment of requirements u/s 10 of FIO, 2001. The short order dated 08.12.2022 only goes to say, if anything at all, that a *lacuna* was reminded to plaintiff bank by the Court to make up for it, and it was taken care of sooner rather than later. The right of appellants to be entitled to leave to defend the suit is basically entrenched in obliging the terms highlighted u/s 10 of FIO Act. When the appellants miserably failed to come up to terms with such obligations, there was nothing left for the Banking Court except to dismiss the applications for leave to defend and decree the suits.

10. We have independently perused the applications for leave to defend the suit and have found nothing proposed by the appellants in terms of section 10 of FIO to make their pleas justiciable under the special law as FIO, 2001.

Consequently, these appeals are dismissed and disposed of accordingly along with pending application(s). Office to place a copy of this order in connected appeals. Office to place a copy of this order in connected appeals.

JUDGE

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