IN THE HIGH COURT OF SINDH CIRCUIT COURT AT HYDERABAD

1st Appeal No.D-58 of 2021

Present:
Mr. Justice Khadim Hussain Tunio
Mr. Justice Jan Ali Junejo

Appellants	:	M/s. NIB Bank Limited and another through Mr. Adil Khan Abbasi, Advocate
Private Respondent	:	Ghulam Hyder son of Muhammad Ibrahim through Mr. Zulfiqar Ali Arain, Advocate
Date of Hearing	:	03.09.2025
Date of Judgment	:	26.11.2025

J U D G M E N T

Jan Ali Junejo, J.- This First Appeal, filed under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 is directed against the Judgment and Decree dated 10.09.2021 passed by the learned Presiding Officer, Banking Court No. II, Hyderabad, in Suit No. 56 of 2014, whereby the suit of the respondent/plaintiff was partly decreed.

2. The respondent/plaintiff instituted Suit No.56 of 2014 under Section 9 of the FI Ordinance, seeking:

a) Declaration that a legal notice demanding Rs. 300,367/- was illegal;

b) Permanent injunction against the appellants from taking coercive action;

c) Declaration that he was entitled to settle his account based on a waiver letter dated 14.03.2011;

d) Costs.

The respondent's case, in essence, was that he obtained a loan of Rs. 361,000/- from the appellant bank. He claimed to have paid substantial installments and subsequently applied for a waiver of outstanding charges. He alleged that the bank, vide letter dated 14.03.2011 (Ex.P/5), offered a settlement conditional upon a lump-sum payment of Rs. 147,000/- on or before 14.03.2011. He received this letter on the evening of 14.03.2011 and, upon inquiry the next day, was allegedly assured by the Branch Manager that he could pay the amount

within 45 days. Acting on this, the respondent paid Rs. 100,000/- on 15.03.2011 and the remaining Rs. 47,000/- in April 2011. He contended that despite this payment, the bank failed to issue a “No Dues Certificate” and later issued an illegal demand notice.

3. The appellants/defendants contested the suit, asserting that: i)The suit was not maintainable as it was filed against the President/CEO and a Collection Manager, not the bank as a juristic entity. ii)The respondent failed to comply with the explicit condition of the waiver letter by not paying Rs. 147,000/- on or before 14.03.2011, thus rendering the offer void. iii)The certified statement of account (Ex.D/7) showed an outstanding liability of Rs. 250,295.07 as of March 2013. iv)The court fee paid was insufficient. The learned Banking Court, after framing issues and recording evidence, decreed the suit partly in terms of prayer clause (c), holding that the respondent was entitled to settle his account based on the waiver letter. The appellants, feeling aggrieved, have preferred this appeal.

4. Mr. Adil Khan Abbasi, learned counsel for the appellants, assailed the impugned judgment as perverse, contending that it rests on a misreading and non-reading of material evidence. He argues that the waiver letter (Ex.P/5) constituted a time-bound contract, and the respondent’s failure to make payment by the stipulated date of 14.03.2011 was fatal to his case; yet, the Banking Court erroneously validated a payment made beyond the contractual deadline. He further contends that the suit was misconceived and not maintainable due to misjoinder of parties, as under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, the suit could only be instituted against the *financial institution* and not its officers in their personal capacities; hence, the President and Collection Manager were not proper parties. He also argues that the Banking Court failed to appreciate the probative value of the certified statement of account (Ex.D/7), admissible under Article 164 of the Qanun-e-Shahadat Order, 1984, which conclusively established the outstanding liability. Lastly, he contends that the plaint was liable to be rejected under Order VII, Rule 11, C.P.C. for non-payment of the requisite court fee on the declared value of the suit. He, therefore, prays that the appeal be allowed and the suit dismissed.

5. Conversely, Mr. Zulfiqar Ali Arain, learned counsel for the respondent, supported the impugned judgment. He argues that the bank, through its Branch Manager, subsequently agreed to accept the payment within an extended period of forty-five days, thereby creating a legitimate expectation and a renewed agreement between the parties. He further

contends that the respondent acted bona fide and paid the entire settlement amount within the extended period, and that the bank's refusal to honour its commitment was arbitrary and contrary to principles of fairness and good conscience. He maintains that the Banking Court rightly invoked equitable principles to prevent injustice and to give effect to the parties' true intention. Lastly, the learned counsel prays for dismissal of the appeal.

6. We have considered the arguments advanced by the learned counsel for the parties and examined the evidence available on record with their able assistance. Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 provides a special, self-contained mechanism for adjudication of disputes *"between a financial institution and its customers"*. The provision, being a special statutory remedy, must be strictly construed and invoked only in the manner prescribed therein. The term "financial institution" is not a generic description but a defined juristic entity, encompassing banking companies, development finance institutions, and other entities notified as such under the Ordinance. Therefore, a suit under Section 9 must necessarily be instituted by or against the financial institution itself in its legal name and capacity. It is settled that misdescription or imperfect pleading as to a corporate entity can be cured by amendment, particularly where the institution is clearly identified, is before the Court, contests on merits, leads evidence, and suffers no prejudice. Procedural rules are handmaids of justice; they are not to defeat substantive rights where the cause of action is clear and the correct entity effectively participates. The plaint described the bank through its President/CEO and its Collection Manager. The record discloses that the bank entered appearance through counsel, filed a written statement, produced the statement of account (Ex.D/7), and conducted trial without demur as to jurisdictional incapacity. In these circumstances, any objection as to description of parties was, at best, a curable irregularity and stood cured. No prejudice has been demonstrated. The learned Banking Court rightly proceeded to adjudicate the real controversy. We find no jurisdictional defect.

7. It stands admitted on record that there was a written offer of settlement. The respondent's unchallenged position is that the letter was delivered on the evening of 14.03.2011, rendering the same-day deadline practically illusory. On the very next day, i.e., 15.03.2011, the respondent approached the Branch Manager and was assured of an extended period of 45 days to comply. Pursuant thereto, he paid Rs.100,000/- on 15.03.2011 and a further sum of Rs.47,000/- in April 2011, both within the

extended period. These assertions stand supported by deposit receipts and by oral testimony that remained unshaken during cross-examination. The bank did not produce any internal directive refuting the Manager's authority, nor any contemporaneous communication rejecting the deposits as non-compliant with the said letter. Crucially, the bank accepted and retained the payments without reservation. In banking practice and agency law, a Branch Manager is clothed with ostensible authority to negotiate, receive payments, and regulate settlements with customers. Even if the initial offer carried a date, the bank, through its authorized agent, could waive or vary the time stipulation or ratify performance by accepting and appropriating payments. The doctrines of waiver and estoppel bar the bank from resiling after receiving full settlement consideration within the period represented by its officer.

8. The parol evidence rule does not bar proof of a subsequent variation or waiver, nor does it preclude evidence establishing ostensible authority or elucidating the circumstances of receipt and the bank's post-offer conduct. The respondent's payments, the bank's acceptance, and the Manager's assurance form a coherent chain proving novation/variation or at least waiver of the strict date. Equity follows the law; it does not rewrite contracts, but it enforces lawful waivers and ratifications evidenced by conduct. The Banking Court correctly applied these principles. A certified statement of account enjoys a presumption of correctness as to entries. However, such presumption is rebuttable and cannot override a proved, binding settlement that extinguishes or compromises the antecedent liability. Once the respondent established the settlement and performance thereof, Ex.D/7, reflecting pre-settlement figures or ignoring the waiver, cannot prevail. The Banking Court rightly treated Ex.D/7 as a general ledger statement that did not grapple with the specific compromise and the bank's acceptance of the settlement payments.

9. Moreover, the bank, being in possession of full records, could have produced internal approvals or correspondence contradicting the asserted extension or showing rejection of the settlement payments. Its failure to do so justifies an adverse inference. The Banking Court committed no misreading; rather, it correctly prioritized the dispositive settlement over accounting entries.

10. The respondent primarily sought declaratory and injunctive reliefs anchored in the settlement, and the decree granted was confined to recognition of the settlement (prayer clause c). The court-fee paid was assessed adequate at trial; no specific shortfall or statutory schedule has been demonstrated before us. In any event, non-payment or deficiency of

court-fee is curable; no failure of justice has been shown. This objection is without merit. The impugned Judgment is founded on a proper appraisal of pleadings, evidence, and settled principles regarding waiver, ostensible authority, and ratification. The findings are neither perverse nor the result of misreading or non-reading of material evidence. Appellate interference is unwarranted where the trial court's view is a plausible and legally sustainable view. We concur with the Banking Court that the respondent successfully performed the settlement within the extended time accepted by the bank and is entitled to have his account treated accordingly.

12. In view of the foregoing discussion, the present First Appeal, being devoid of merit, is hereby dismissed. The Judgment and Decree dated 10.09.2021 passed by the learned Presiding Officer, Banking Court No. II, Hyderabad in Suit No. 56 of 2014 are affirmed and maintained. Parties shall bear their own costs. Decree be drawn accordingly.

JUDGE

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