

IN THE HIGH COURT OF SINDH AT KARACHI

R.A No. 88 /2005

Applicant : **State Life Insurance Corporation of Pakistan through Mr. Asadullah Shaikh, Advocate**

Respondents : **Saeeduddin Ahmed Zuberi & others**
None present for the respondents.

Date of hearing : **25.08.2016**

Date of judgment: **25.08.2016**

JUDGMENT

NAZAR AKBAR, J. This Revision is directed against the findings of the Trial Court in Suit No. 161/1992 by judgment and decree dated 23.7.202 which was maintained by the Appellate Court in Civil Appeal No. 199/2002 by judgment and decree dated 3.2.2005.

2. Briefly stated, the applicant herein is an Insurance Company who on **1.6.1976** entered into a contract with respondent No. 2 (hereinafter the “NBP”) to provide insurance cover against the loan advanced by the NBP to its employees. Respondent No. 1 was an employee of the NBP and he had obtained staff loan in the name of his wife. He retired from service with effect from **21.1.1988** and his wife has died before his retirement on **12.9.1987**. On retirement, the NBP from his retirement benefit recovered various outstanding dues from respondent No. 1 including the outstanding amount of staff loan as on **21.1.1988**. All retirement benefits of respondent No. 1 were settled sometime in 1990. In 1992 after two years Respondent No. 1 filed Civil Suit against the NBP for recovery of various dues adjusted

from his retirement benefits including loan taken by him during service in the name of his wife who died in 1987. The applicant was also impleaded as Defendant No.3. Respondent No.1 has prayed for the following relief(s):-

I) Payment for Rs.2,07,031/37 (Rupees Two Lac Seven Thousand Thirty One and paise thirty seven only) to the Plaintiff by the Defendant Bank alongwith interest/profit (staff rate) from the date of deductions made till the realization of Decretal amount.

II) Declaration that the recovery of loan amount of deceased Mrs. Habib Jehan Zuberi (A/c.No.1-002-301110) from the pensionary funds of the Plaintiff is illegal, void, in deviation of principles of Natural justice and against the law and practice of Banking and thus, consequently the Plaintiff is entitled for refund of the amount so deducted plus interest/profit (Staff Rate) thereon from the date of their passing illegal entries till the date of refund of amount by the said bank.

III) Declaration that the act of State Life Insurance Corporation of Pakistan insuring a Guarantor's Life (employee) to link with and providing coverage to a loan given to the 3rd person (Employee's wife) by the bank instead of insuring loanee's life and cover the loan is illegal, void, in-operative and against the normal laws of insurance and therefore need rectification nullifying all such payments made and further to refund the payments to these legal heirs from whom illegal recovery has been made after the death of the loanee deposit the fact that the Insurance Company received due premium for the loan coverage.

IV) Permanent injunction restraining the Defendants from acting or effecting in any manner whatsoever to hinder or prejudice or causing any damages to the interest of the Plaintiff.

V) Cost of the suit.

VI) Any relief of relief which the Hon'ble Court deem fit and proper.

3. The NBP contested the claim of respondent No. 1 by filing written statement. The applicant also filed its written statement. The trial Court framed as many as 14 issues and after recording evidence and hearing the parties decreed the suit.

The main respondent i.e. the NBP did not file any appeal. Only the present applicant (State Life Insurance Corporation) preferred appeal bearing Civil Appeal No. 199/2002 and the appeal was also dismissed.

4. I have heard learned Counsel for the applicant and perused the record. Learned Counsel for the applicant has contended that insurance of loan advanced to Respondent No. 1 / staff by Respondent No. 2 had nothing to do with Respondent No.1. The loan contract was between Respondents No.1 and 2 and its recovery was also an issue between them. The applicant has not recovered anything from Respondent No. 1 at the time of his retirement. Loan was advanced by the NBP to the staff and in terms of the agreement between the applicant and the NBP (Ex.D/5) if at all, it was recoverable from the applicant (Insurance Company), then it was an issue between the applicant and the NBP and Respondent No.1 had nothing to do with it. It is contended that courts below have failed to appreciate the documents Ex. D/5.

5. I have gone through the record and found that no cause of action has been shown by the Respondent No.1 / the Plaintiff against the applicant in the memo of plaint. The grievance of Respondent No.1 was only against the NBP. In the memo of plaint nothing has been alleged against the applicant. The applicant was conscious of this position and therefore, in para-24 of his plaint about cause of action to file the suit, Respondent No.1 has not even mentioned name of the applicant. The contents of para-24 of the plaint are reproduced as follows:-

24) That the cause of action for filing of this suit was accrued to the Plaintiff on 21.01.88 when he was retired by the

Defendant Bank from his service and on all other earlier or subsequent dates when the Defendants No.1 had illegally withhold, adjusted and deducted the amount from the pensionary funds of the Plaintiff and finally on 26.01.88 and 27.1.88 when the dues were paid by the Defendant bank to the Plaintiff.

The contract between the applicant and the NBP was private arrangement and individual staff of the NBP had nothing to do with the said contract, Ex.D/5. In the instant case the applicant has not recovered or claimed anything from Respondent No.1/plaintiff and therefore, there no cause of action has accrued to Respondent No.1 against the applicant.

6. In the above facts of the case, the applicant was not even necessary party, therefore, the judgment and decree of the two courts below are set aside as against the applicant. The suit No.161/1992 stand dismissed only against the applicant. The other respondents have not challenged the judgment and decree and therefore, judgment and decree in suit No. 161/1992 as against the remaining Respondents is maintained. It is not enforceable only against the applicant (Defendant No.3).

JUDGE