

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
IST APPEAL NO. 79 / 2015

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Date	Order with signature of Judge
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- 1) For orders on office objection & reply of Advocate as at "A".
- 2) For orders on CMA No. 3874/2015.
- 3) For hearing of main case.
- 4) For orders on CMA No. 2875/2015.

27.10.2015.

Mr. Neel Keshav Advocate for the Appellant.

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Through instant appeal the appellant has impugned judgment dated 14.1.2015 and decree dated 24.2.2015, passed by the Banking Court No.IV, at Karachi, in Suit No. 263 of 2010 whereby, the Suit filed by respondent No.1 against the appellant was decreed in the sum of Rs. 42, 242, 625/- with cost of fund from the date of default till recovery of the decretal amount.

Counsel for the appellant submits that though the appellant does not dispute that finance facility was availed and default has occurred in repayments, however, contends that since the appellant had pledged certain goods valuing Rs. 46,495,500/- with the respondent bank which were under the control of the Muqadam (Respondent No.2) and have been misappropriated with the connivance of the bank officials, as well as respondent No.2, therefore, the appellant is not liable to pay the decretal amount. Counsel has further contended that the appellant in respect of such misappropriation, has also filed a Banking Suit bearing No. B-54 of 2010 which is pending before this Court, and therefore, till such Suit is decided either way, the execution proceedings cannot commence against the appellant.

We have heard Counsel for the appellant and perused the record as well as the impugned order. At the very outset we had confronted the Counsel for the appellant with the provision of Section 176 of the Contract Act, which according to us is squarely applicable in the present circumstances, and the Counsel could not controvert such legal position. However, contends that since allegedly the goods have been misappropriated by the Bank officials in connivance with the

Muqadam/respondent No.2, therefore, the appellant is not liable to make payment of the decretal amount.

However, we are not impressed by such contention as the provision of Section 176 of the Contract Act is very clear which provides that if the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise in respect of which the goods were pledged, the pawnee may bring a Suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged on giving the pawnor reasonable notice of the sale. Whereas if the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance and correspondingly if the proceeds of the Sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Therefore, according to us the cause of action accrued to the respondent bank is independent of the claim of the appellant in respect of the alleged theft / misappropriation of the pledged goods, and so also the provision of Section 176 applies independently on such claim. If the appellant is able to succeed in its Suit against the respondent bank, then naturally the appellant would be entitled to receive such claim. However, mere filing of such Suit and that too for declaration and rendition of accounts as is evident from the plaint of the Suit, cannot be a cause or reason to restrain the respondent bank from initiating the recovery proceedings under the Banking law. We may further observe that on a query by this Court, it was admitted by the Counsel for the appellant that no criminal proceedings including registration of any FIR were initiated on behalf of the appellant in respect of the alleged theft and misappropriation of the pledged stocks.

In view of such position, we are of the view that instant appeal is devoid of any merits and the contention so raised on behalf of the appellant appears to be misconceived. Accordingly, instant appeal is dismissed in limine, whereas, the Suit filed by the appellant shall be decided in accordance with law.

JUDGE

JUDGE

ARSHAD/