

# IN THE HIGH COURT OF SINDH AT KARACHI

S.H.C.A NO.181/2017

**Present: Munib Akhtar & Yousuf Ali Sayeed, JJ**

Appellants: M/s. Peoples Fisheries (Private) Limited &  
Other, through Mr. Yousuf Moulvi, Advocate.

Respondents: M/s Faysal Bank Limited, Nemo.

Date of hearing: 16.03.2017

Date of Judgment:

## JUDGMENT

**YOUSUF ALI SAYEED, J.** The Appellants in this Special High Court Appeal are defendants in Suit Number B-28 of 2016 (the “**Banking Suit**”) pending before this Court in exercise of its original banking jurisdiction under the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the “**Subject Ordinance**”).

2. In terms of an Order made in the Banking Suit on 21.02.2017 (the “**Impugned Order**”), the learned single Judge seized of the matter was pleased to dismiss the Application filed by the Appellants Nos. 1 and 2 seeking leave to defend the Banking Suit (the “**Leave Application**”), on the ground that the same was barred by limitation, having been filed beyond the period of 30 days from the date of first service as prescribed under S.10(2) of the Subject Ordinance, hence this Appeal whereby the Appellants have prayed inter alia that the Impugned Order be set aside and the Leave Application be remanded for decision afresh on merits.

3. The scheme of the Subject Ordinance does not require detailed exposition. Suffice it to say that the right of defense in recovery proceedings thereunder hinges on a defendant obtaining leave on application to the Banking Court. Such application for leave is to be filed within 30 days of the date of first service by any of the modes laid down in S.9(5), which stipulates that on presentation of a plaint before the Banking Court, notices are to be simultaneously effected through various modes, including the bailiff or process-server, by registered post acknowledgment due, via courier, and by publication in one English language and one Urdu language daily newspaper with a wide circulation within the territorial limits of the Court, and service duly effected in any of these modes constitutes valid service.
4. The salient facts for purposes of the present controversy as to limitation, as extracted from the very Memo of Appeal, are that the Banking Suit was instituted on 25.07.2016, and, admittedly, notices summoning the defendants to obtain leave were issued the same day by the Assistant Registrar D-II Branch for appearance before the Additional Registrar (O.S.) on 02.09.2016. Thereafter, publication was effected on 27.07.2016 in the Daily Dawn as well Jang Karachi, and notices were dispatched via courier service the same day and subsequently also consigned via registered post A/D on 28.07.2016.
5. From a perusal of the Memo of Appeal we have noted that whilst all the defendants to the Banking Suit have been formally arrayed as Appellants in the title, on closer inspection the Appeal has in fact only been signed by the Appellant No.2 on his own behalf and as the authorized representative of the Appellant No.1, pursuant to a board resolution dated 09.03.2017, as filed therewith. The scope of the aforementioned prayer is also thus confined.

6. The basis of the Appeal, as presented before us, is that the Appellants Nos.1 and 2 had no knowledge of the Banking Suit as summons were not sent through the bailiff, and it was contended that had this been done the Appellants would have been able to file the requisite leave to defend application within the period stipulated in the Subject Ordinance. It was further submitted that the Appellants only came to have knowledge of the Banking Suit on 30.08.2016, when they were informed thereof by an advocate who enquired whether they were interested in entrusting him with the brief, and contended that the learned single Judge fell into error in not appreciating that the 30-day period for the purposes of S.10(2) ought to be reckoned as commencing from that date.
  
7. Apart from this bare submission, the Memo of Appeal, and indeed the Leave Application itself, are bereft of any explanation as to how the Appellants remained unaware of the Banking Suit in the face of service through the other modes adopted by the Court, each of which constitutes valid service within the contemplation of S.9(5) of the Subject Ordinance so as to trigger the application of S.10(2) thereof. Indeed, the learned single Judge has observed in the Impugned Order that “there is no reasonable explanation provided as to the non-service of notices with reference to the above modes”. As such, we are unimpressed by the contention raised, and are constrained to say that the same appears most implausible. Indeed, if such bare submissions were to be accepted it would create fertile ground for mischief and undermine the very objects of the Subject Ordinance.
  
8. Furthermore, as noted by the learned single Judge, the Appellant No.2, who was the Defendant No.2 in the Banking Suit, had himself addressed a letter to the Respondent bank on 03.08.2016 on the letterhead of the Appellant No.1, wherein reference was made to the Banking Suit and it was requested that certain concessions be made towards settlement.

9. On this basis, the learned single Judge reasoned that even if the contention of the Appellants as regards service through the bailiff were to be taken as correct, it was apparent from the face of the letter dated 03.08.2016 that, at the very least, the Appellants had knowledge of the Banking Suit as on that date, while the Leave Application was filed on 16.09.2016, which even then is beyond the prescribed period of 30 days.
  
10. Learned counsel for the Appellants has alleged that the said letter of 03.08.2016 is a forgery and has been manipulated by the Respondent bank. However, we have noted that apart from a bare mention, the Memo of Appeal is bereft of any particulars on this score as well. Tellingly, the authenticity of the document does not appear to have even been assailed in the Banking Suit, and, even otherwise, the signature on the letter appears to correspond with the signature of the Appellant No.2 on the Memo of Appeal.
  
11. In our view the reasoning of the learned single Judge appears perfectly sound and we see no infirmity in the Impugned Order. The Appeal, being without merit, is thus dismissed accordingly.
  
12. These are the reasons for our short Order dictated in open Court on 16.03.2017.

JUDGE

JUDGE

Karachi  
Dated \_\_\_\_\_