

IN THE HIGH COURT OF SINDH AT KARACHI

II-Appeal No.113 of 2013

Present: Mr. Justice Nazar Akbar

Appellant: Saeed Khan Mobejo through Mr. Inderyas Barkat, Advocate.

Respondent No.1: Trading Corporatin of Paksitan through Mr. Muhammad Safdar and Ms. Roheela Nazar, Advocates.

Respondent No.2: VII Addl: & Sessions Judge at Karachi South

Respondent No.3: IIRD Senior Civil Judge at Karachi South

Date of hearing: **22.3.2017**

Date of announcement: **18.4.2017**

J U D G M E N T

NAZAR AKBAR, J:- The appellant has filed this IInd Appeal against concurrent findings of two courts below whereby Suit No.1616/2002 filed by respondent No.1 was decreed by judgment dated 10.4.2010 by learned IIIrd Senior Civil Judge, South Karachi and Civil Appeal No.169/2010 filed by the appellant against the said decree was dismissed by the learned VII Additional District Judge, South, Karachi by judgment dated 06.11.2013.

2. The brief facts of the case are that Respondent No.1 filed a Civil Suit No.1616/2002 for recovery of Rs.10,51,700/- from the appellant. The appellant was employed as Manager P.R.O by the respondent in the year 1981 and during service he availed two facilities; one for Motor Car Loan and second House Building Loan. Apart from the two facilities, the respondent alleged in the plaint that the appellant has also availed sundry advance and he has misused TA/DA and telephone facilities during the service in 1993-94 to

1996-97. The services of the appellant were terminated on **23.6.1998** and the respondent filed a suit for recovery of an aggregate amount of Rs.10,51,700.26 from the appellant since inspite of repeated demands, the appellant had failed to clear the said amount.

3. The appellant halfheartedly contested the suit and did not participate in the proceeding of suit after filing his written statement wherein he has controverted the averments of the plaint. He admitted that he had obtained motor car and house building loan but contended that the motor car and house building loan were adjusted by deducting the installments from his monthly salary. He further contended that he was dismissed from service and the payment of the loan was to be decided by the respondent No.1 according to the rules.

4. The respondent No.1/plaintiff led their evidence and had filed affidavit-in-evidence of witnesses but neither the appellant cross examined the witnesses of respondent No.1 nor produced evidence in support of his own claim in the written statement. Therefore, the suit filed by respondent No.1 was decreed by the trial Court by judgment dated 10.4.2010. The appellant preferred an appeal against the decree, which was also dismissed by judgment dated 06.11.2013 and now the appellant has filed the instant IInd Appeal.

6. I have heard learned counsel for the appellant and respondent No.1 as well as perused record.

7. The only issue addressed before this Court at the bar by the appellant is that while claiming recovery of outstanding house loan and car loan after termination of his service, the respondents have included such other amount which had even become time barred, if at all, the said amount were recoverable from the appellant. He has

referred to para-5 of the plaint and its reply in his written statement. It is an admitted position from the record i.e para-4 of the plaint that an amount of Rs.416,362/- had been claimed in respect of TA/DA, unpaid hotel bills, telephone bills as well as excess POL charges of 840 liters were for the period from **1993-94** to **1996-97**. The suit had been filed on **31.5.2001** and, therefore, the recovery of the said amount was beyond the limitation period, if at all. Learned counsel for the respondent when confronted with this factual position, had no reply except that the suit has been filed after the final termination of the plaintiff when his appeal at the Hon'ble Supreme Court level was dismissed. His other contention was that the applicant has never appeared in the witness box after filing of the written statement and therefore, the claim of respondents was undisputed.

8. The applicant has not disputed the fact that he had obtained house building finance loan and car loan from the respondents during his service and of course the entire amount of loan was not paid before his removal from service. He has not been able to contest the amount of House Building Loan and Motor Car Loan and Sundry Advance detailed in para-6 of the plaint.

9. In view of the facts on the record the two concurrent findings whereby the Court below had decreed for recovery of **Rs.416,362/-** (para-5) of plaint) which were due and recoverable on or before 1997 was hopelessly time barred. It is indeed the fault of the respondent that they had never adjusted this amount from his salaries before the date of his removal from service. There must have been repeated internal audit of the institution of respondent as well as external audit. If such amount was not found or pointed out by the auditors, it should have been adjusted by the respondent from his salary

forthwith. The respondent cannot claim the said amount after 4 to 7 years through Court of Law. Even the respondent has never sent a notice for its recovery to the appellant before filing suit for recovery of said amount. The respondent has not produced any document showing that the said amount has been claimed from the applicant or otherwise, they were not in a position to deduct the said over payment from his salaries which they continued to pay to the appellant until he was finally removed from service.

10. In view of the above, the judgments and decrees of trial and the appellate Court are modified to the extent the claim of Rs.416,362/- by respondent No.1 was erroneously decreed as it was time barred. Therefore, the judgments and decrees of the trial Court and appellate Court are modified and the suit filed by respondent No.1 is decreed only for an amount of **Rs.6,35,338/-** against the appellant.

J U D G E

Karachi
Dated:18.04.2017.

*Ayaz Gul/P.A**