

IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal 270 of 2017

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Muslim Commercial Bank Limited
vs.
Haji Jan Muhammad and Others

For the Appellant: Mr. Mansoor-ul-Arfin, Advocate
For the Respondents: Mr. Asim Mansoor Khan, Advocate
Date of Hearing: 31.10.2018
Date of Announcement: 24.12.2018

JUDGMENT

Agha Faisal, J: The crux of this Judgment is the determination whether it was just and proper for a learned Single Judge of this Court to render an inquisitorial order, in non-contentious succession proceedings, against a financial institution whereat accounts of the deceased were maintained.

2. The appellant's case was set-out by Mr. Mansoor-ul-Arfin Advocate, and the essence thereof is condensed and presented herein below:

- i. It was submitted that the estate of (Late) Mr. Haji Abdul Razzak ("**Deceased**") was the subject matter of succession proceedings before a learned Single Judge of this Court in SMA *Nil* of 2014 ("**SMA**"). The following

order was passed in the SMA on 27.04.2017 (“**Impugned Order**”) giving rise to the present High Court Appeal:

“Learned counsel for the petitioner at the very outset focused the attention of this Court towards order dated 07.04.2014, whereby, the application filed by the petitioner was allowed and consequently office/ Nazir was directed to collect the detailed report from the concerned Banks as referred to and mentioned in Annexure ‘D’ available at page 33 of the Court file. Per learned counsel, such complete/ comprehensive report has not been provided so far.

Be that as it may, Nazir is directed to collect the statement of accounts from the concerned Banks w.e.f. year, 1997 upto 21.02.2014 when Haji Abdul Razzaq son of Haji Yaqoob passed away.”

- ii. Per learned counsel such an investigation into the historical perspective of the accounts of a deceased could not be undertaken in succession proceedings, hence, the Impugned Order was patently in excess of jurisdiction. Learned counsel referred to Sections 372, 373, 374, 377, 381 and 387 of the Succession Act, 1925 (“Act”) and also referred to Rules 379 read with Forms 25 and 29 of the Sindh Chief Court Rules, and sought to demonstrate that the proceedings thereunder did not contemplate the initiation of investigative proceedings against a financial institution, where accounts of a deceased may have been maintained.
- iii. Per learned counsel, earlier orders were passed in the SMA dated 07.4.2014, 24.4.2014 and 22.9.2014 (“**Earlier Orders**”) seeking the balance amount of the Deceased in accounts maintained with the appellant and such information had already been provided to the Court, as

was manifest from the account statements available from page 59 onwards in the Court file.

- iv. It was submitted that the Deceased passed away in the year 2014 and the Impugned Order sought the statements of account from the appellant with effect from 1997 till 2014. It was submitted that the Impugned Order was unlawful as the pending SMA proceedings had no nexus with the affairs of the Deceased prior to his demise.
- v. It was further contended that the Deceased, being a customer of the appellant, died in the year 2014 and all the statements of account until such time had been provided thereto. The said customer had never raised any reservation with respect to the statements of account or any other matter with respect to his accounts maintained with the appellant and therefore, summoning of such record in an SMA would create an unmerited precedent in law.
- vi. It was further added that while the legal heirs of the deceased were entitled to the estate of the deceased, a distinction was required to be drawn that they could not be deemed to be customers of the appellant, hence, could not be treated as such under the law.
- vii. Learned counsel relied upon the judgments in *Re: Rajambal Bai* reported as AIR 1955 NUC (Madras) 3943 ("**Rajambal Bai**") and *Bai Kashi v. Parbhu Keval* ("**Bai**

Kashi”) reported as *ILR 1904 p.119* in order to augment his submissions and prayed that the Impugned Order be set-aside as being prima facie in excess of jurisdiction.

3. Mr. Asim Mansoor Khan, learned counsel for respondents, controverted the case set forth on behalf of the appellant and his arguments are encapsulated and delineated herein below:

- i. It was submitted that a restraint was placed upon the accounts of the Deceased in late 1996 and the said embargo remained in place till his demise. Therefore, any activity in the accounts, to the detriment of the Deceased, was likely to prejudice the interests of the legal heirs of the Deceased.
- ii. Learned counsel relied upon BPRD Circular No.2 of 2010 to demonstrate that the account-holders / customers are entitled by law to receive statements of account with respect to their accounts maintained with financial institutions. It was contended that upon the demise of the Deceased, the legal heirs stepped into the shoes of the Deceased and hence were entitled to obtain statements of account in the same manner as would have been permissible to the Deceased, at the time that he was alive. It was thus sought to be argued the present respondents, being the legal heirs of the Deceased, are now required by law to be treated as customers by the appellant.

- iii. Learned counsel referred to the orders dated 07.4.2014, 24.4.2014 and 22.9.2014 and stated that the appellant's challenge to the same could not be maintained on the ground of limitation as the present petition was filed in the year 2017.
- iv. It was submitted that the Act was silent in regard to the permissibility of seeking the kind of information being sought by the Impugned Order and hence it was apparent that no bar was contained therein. It was conceded by the learned counsel that while the learned Single Judge was not empowered to launch an investigation, but he had ample powers to call for information and that was precisely what was done vide the Impugned Order. Therefore, it was prayed that the Impugned Order be maintained and upheld and the present appeal be dismissed forthwith.

4. We have heard the arguments of the respective learned counsel and perused the record arrayed before us. The learned counsel for the appellant has forgone the challenge to the Earlier Orders during the course of the hearing, hence, the deliberation upon whether a challenge to the same was maintainable in the present appeal is no longer merited. Even otherwise it is observed that the Order dated 07.04.2014 requires a report in respect of the Deceased's accounts to be submitted and same was ostensibly the case with the Order 22.09.2014, as admitted by the respondents vide their counter affidavit available on record. Therefore, the edict requiring submission of statements of account with effect from 1997 to

2014 only arises from the Impugned Order and therefore the question before us to determine is whether the Impugned Order was lawful, just and proper in the present facts and circumstances.

5. The judgment in the case of *Rajambal Bai* was relied upon by the learned counsel and the operative constituent thereof observes as follows:

“The purpose of the grant of succession certificate is not to give the litigant parties an opportunity of litigating contested questions of title to property. The object of the Act (Part X) is to obtain the appointment of some person to give a legal discharge to debtors to the estate for the debts due. It was not intended that nice questions of law as to the rights of the parties to the estate of the Deceased should be decided on an application under it.”

6. In *Bai Kashi* it was maintained that there was nothing in the Act which either expressly or by necessary implication required the Court granting a certificate to hold an inquiry into the existence of any debt alleged by the person applying to be due as a preliminary condition to the grant. The Court had merely to ascertain the representative title of the applicant and not the existence or non-existence of the debt.

7. It is apparent from the record that there is no mention of the Deceased having expressed any dissatisfaction with regard to his accounts, maintained with the appellant, during his life time. Even if the legal heirs apprehend that the accounts had been dealt with otherwise than in accordance with the law, they remained at liberty to institute the appropriate proceedings in such regard before the forum of appropriate jurisdiction. The proceedings before the learned Single Judge, in the SMA, are not in an adversarial nature and the appellant is not even a party thereto, hence, the SMA could not be designated as the appropriate forum for the legal heirs, being the respondents

herein, to seek an inquisition into and / or the determination of any apprehensions that they may have with respect to the accounts of the Deceased maintained with the appellant. Therefore, the direction of the learned Single Judge in the Impugned Order, seeking the statements of account of the Deceased with effect from 1997 till 2014, is deemed to be unmerited, and cannot be considered as just and proper, in the facts and circumstances of the present case.

8. In view of the reasoning and rationale contained herein, and with utmost respect to the learned Single Judge, we are of the considered view that the Impugned Order is not sustainable, hence, the same is hereby set aside. The present appeal is hereby allowed in terms herein.

Judge

Judge

asim/pa