

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**Present**

**Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Adnan-ul-Karim Memon.**

**C.P. No.D-368 of 2019**

Muhammad Siddique .....Petitioner

Vs.

Silk Bank Limited & others .....Respondents

Date of hearing: 06.03.2019.

Date of Decision: 06.03.2019.

Mr. Aamir Ali Memon, advocate for petitioner.

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**ORDER**

**ADNAN-UL-KARIM MEMON-J:** - Through the instant petition the petitioner has assailed the order dated 12.02.2019 passed by learned Judge Banking Court-II, Hyderabad whereby application under section 151 CPC for consolidation of suits filed the petitioner has been dismissed on the premise that nature of both the suits are different and there is no similarity in the issues, thus the question of conflict of judgments does not arise.

2. Brief facts of the case are that both the suit bearing No.341/2015 (Re-Silk Bank versus M/s Saud Builder & Developer and others) filed by the respondent-Bank and another Suit bearing No.09/2011 (Re-Mohammad Siddique versus President Silk Bank Limited) filed by petitioner are pending adjudication before the learned Banking court. Per petitioner both the suits are on the same cause of action and there is strong likelihood of conflicting judgments. During pendency of the aforesaid suits, the petitioner being apprehensive filed an application under section 151 CPC before the learned trial Court for consolidation of the aforesaid suits which has been dismissed

by the learned Banking Court vide impugned order dated 12.02.2019. Petitioner being aggrieved by and dissatisfied with the order has filed the instant petition on 22.2.2019.

3. Mr. Aamir Ali Memon learned counsel for petitioner has argued that the aforesaid suits are regarding the same subject matter between the same parties, therefore, in order to avoid conflicting judgments, it is imperative to consolidate both the matters but learned trial Court while dismissing the application for such purpose has ignored the factual as well as legal aspect of the case; the impugned order is against the basic sprit of law, thus liable to be set aside.

3. We have heard the arguments and perused the impugned order and available record.

4. We have noted that there is no specific provision in the CPC for consolidation of suits. Such a power has to be exercised only under Section 151 CPC to foster interest of justice and meet exigencies. The purpose of consolidation of suits is to save cost, time and effort and to make the conduct of several actions more convenient by treating them as one action. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses and the parties are relieved of the need of adducing the same or similar documentary and oral evidence twice in the two suits at two different trials. In our view suits always retain their independent identity and even after an order of consolidation, the court is not powerless to dispose of any suit independently.

5. We have noted from the pleadings of the parties that the basic grievance of the petitioner against the respondent bank is based on a different cause of action. Therefore the consolidation of these two suits is neither

contemplated nor permissible. The prayer of petitioner in C.S. No.09 of 2011 is as under:-

*“The plaintiff, therefore, prays that this Honorable Court be pleased to pass Judgment and Decree as under:-*

1. *By order declare:*
  - a) *That the documents annexures to prepared and produced in the High Court in C.P.D.1379 of 2010 by the Defendants are bogus and forged.*
  - b) *That the plaintiff has never acted nor stood as Surety nor produced nor prepared his documents for the mortgage of Rs.2-1/2 crores loan obtained by Mr. Saud Ahmed Khan in the Silk Bank or before any official of the Bank or any other Authority.*
  - c) *That the bogus and forged documents prepared by the defendants do not convey any legal claim, right or authority in respect of the plaintiff's suit property and it is liable to be forfeited and the original documents to be returned to the plaintiff.*
  - d) *That the plaintiff has become entitled to compensatory costs/ damages.*
2. *That by order the bogus/ forged surety bonds and relevant forged bogus documents prepared by the defendants be cancelled/ forfeited.*
3. *That by order the defendant be directed to return original documents of the plaintiff suit property to the plaintiff.*
4. *That the defendants be saddled with compensatory costs/ damages.*
5. *Grant any other relief as deemed proper and just.”*

Whereas the prayer of Bank-respondent in suit No.341/2015 is under:-

- a. *Decree for Rs.30,427,521/21 may be passed against the defendants No.1 to 3 jointly, collectively and severally along with cost and cost of fund as provided under Ordinance 2001 till realization of amount.*
- b. *In case defendants fail to repay Decretal amount, Mortgaged property belonging to defendant No.03 be ordered to sell out for realization of Decretal amount and also for sale of moveable and immovable property of the defendants.*

*c. In case proceeds of sale are found insufficient for amount under Decree than money Decree for remaining amount.”*

6. We therefore are of the view that there is no illegality in the order passed by the trial court dismissing the application for consolidation of the suit. This being the position the petition is meritless and is accordingly dismissed in *limine* alongwith pending applications.

**JUDGE**

**JUDGE**

**Irfan Ali**