

IN THE HIGH COURT OF SINDH AT KARACHI

First Appeal No. 69 of 2007

Before : **Mr. Justice Irfan Saadat Khan**
Mr. Justice Fahim Ahmed Siddiqui

NIB Bank Limited.	Appellant
Versus		
Allied Services & others.	Respondents

Dates of Hearing : 23.09.2019, 11.12.2019 and 12.12.2019

Date of Judgment : _____

Appellant Nib Bank Ltd. through Mr. Omer Soomro, advocate.
 Respondents Nos. 1 to 3 namely Allied Services, Mr. Habib-ur-Rehman
 and Mr. Hafeez-ur-Rehman through Mr. Khalid Dawoodpota, advocate.

J U D G M E N T

FAHIM AHMED SIDDIQUI, J:- This First Appeal is directed against the judgment dated 24.08.2009 and decree dated 15.09.2007, passed/drawn by Banking Court No. II, Karachi in Banking Suit No. 65/2007. Through the impugned judgment, the Suit filed by the appellant was decreed up to the extent of Rs. 3,52,405/- with the future cost of funds as per the then rates prescribed by the State Bank of Pakistan. The grievance of the appellant is that the outstanding amount of rentals i.e. Rs. 36,24,922/- plus additional lease rentals plus mark-up was not entertained by the learned Banking Court.

2. The brief facts of the case, as mentioned in the impugned judgment, are that on the request of the respondents, the appellant has extended the leasing facility of Rs.76,40,000/- to the respondents in

respect of two units Hino CITILINER Urban Buses with air-conditioners under a lease agreement dated 24.03.2004. The amount was payable in 60 monthly lease rentals at the rate of Rs.1,44,890/- with effect from March 2004 to February 2009. The air-conditioner units were separately purchased by the respondents from M/s. Indus Engineering on 08.03.2004 for an amount of Rs.26,40,000/-and sold out to the appellant for fixing the same in the said buses, which were leased out to the respondents. The respondents have executed and signed the requisite documents for securing the payments of lease rentals and other charges, which were delivered to the appellant.

3. After completing usual formalities, the Suit was proceeded and subsequently decreed, as mentioned above, but at the time of decreeing the Suit, the learned Presiding Officer has observed as under:

"On calculation, total rental for the period of 16 months comes to Rs.86,93,400/-. Admittedly, the vehicles repossessed on 15.01.2005 by the plaintiff and at the time of repossession, as per breakup, the rentals due are at Rs.3,62,405/-. The plaintiff also claim the principal outstanding in the sum of Rs.59,22,953/-. The record reveals that the principal amount was an investment of plaintiff in the shape of two unit Hino Buses delivered to the defendants, which admittedly the plaintiff have repossessed on 15.09.2005 and I am of the view that the repossession of Buses amounts to withdrawal of investment (principal amount), hence outstanding principal amount is untenable. However, the plaintiff is entitled to recover/repossess the Air-conditioner Units laying with the defendants. The plaintiff have also claimed Additional Lease Rentals which after withdrawal of investment (principal amount) the plaintiff are not entitled."

4. We have heard the arguments and perused the record and also enlightened from the citations relied upon from either side.

5. Mr. Omer Soomro, the learned counsel for the appellant, after referring the impugned judgment, submits that the appellant is engaged in the banking business and has nothing to do with the business of transportation; as such repossession of buses could not be amounted to the withdrawal of financing facility. He submitted that it was a case of

financial lease, as such an outstanding amount was required to be recoverable. When the attention of the learned counsel for the appellant was drawn towards the limitation, as the impugned judgment was passed on 24.08.2007, while the instant appeal was filed on 11.10.2007, i.e. after much delay, he submits that the appeal is within time if calculated from the date of the decree, which was drawn on 15.09.2007. In the end, he submits that whatever the rentals due along with other amounts, were payable as such the decree is required to be modified up to that extent. The learned counsel takes reliance from the case of **Kasb Bank Limited vs Messrs Trans Livia Private Limited (PLD 2007 Karachi 508)**.

6. Mr. Khalid Dawoodpota, counsel appearing for the respondents, supports the impugned judgment. He submits that the respondents were satisfied with the impugned judgment; therefore, they did not file any appeal. He submits that the appellant has snatched the buses from the road without giving notice to the respondents, which amounted to withdrawal of the financing facilities extended to the respondents. According to him, as soon as the impugned judgment was pronounced, the appellant should file the appeal, which they did not do as such the instant appeal is definitely time-barred. In support of his contentions, he relied upon the cases of **Apollo Textile Mills Ltd vs Soneri Bank Ltd. (PLD 2012 Supreme Court 268)**, **M/s Allied Services vs City District Government Karachi (SBLR 2008 Sindh 660)**.

7. We are of the view that it would be better to ponder over the point of limitation before entering into further discussion. The impugned judgment was passed on 24.08.2007 and the appellant applied for certified copies on 21.09.2007, which was supplied to him on 24.09.2007, while the instant appeal was presented on 11.10.2007. The appeal was required to be filed within 30 days, while it was filed in this way, apparently, the appeal was filed after 48 days of passing impugned

judgment and if 3 days consumed in getting copies were deleted; the appeal was filed after 45 days of the impugned judgment. Nevertheless, the contention of the learned counsel for the appellant is that the appeal is within the time if the time was calculated from the date of drawing decree. The impugned decree was drawn on 15.09.2007, and if time was calculated from the date of the decree, the appeal was filed within the period of limitation.

8. For appreciating the correct legal position, it will be appropriate to see the relevant statutory provision. The right of appeal and period of limitation are described under sub-section (1) of Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (hereinafter referred to as 'the Ordinance'), which is reproduced as under:

“22. Appeal.- (1) Subject to sub-section (2), any person aggrieved by any judgment, decree, sentence, or final order passed by a Banking Court may, within thirty days of such judgment, decree, sentence or final order prefer an appeal to the High Court.”

9. We have highlighted the relevant phrase by underlining, which described that if a person is aggrieved by any judgment, decree, sentence or final order, may prefer an appeal within thirty days of such judgment, decree or order. It is worth noting that in the underlined portion the conjunction 'OR' has been used twice, which indicates that an aggrieved person does not need to wait for decree after passing the impugned judgment. The contention of learned counsel for the appellant may bear weight if it was an appeal filed under Section 96 of the Code of Civil Procedure, 1908. However, since the special law prevails over general law; therefore, the appellant had to file appeal within 30 days of pronouncement of judgment as provided under Section 22(1) of the Ordinance, or to file an application for condonation of delay under Section 5 of Limitation Act, which was not filed by the appellant and the same cannot be filed now. In the existing position of affairs, it is obvious that the

instant appeal is not maintainable on account of limitation. In this respect, we fortify our view from the case reported as Apollo Textile Mills Ltd (supra), wherein it is held as:

“Where appeal was allowed against the judgment or decree or a final order, filing of appeal within limitation was mandatory from the delivery of judgment and waiting for the grant of certified copy of the decree would not enlarge the limitation and in such a case non-filing of the decree would not be fatal to the appeal.”

10. In view of the above discussion, we have no option but to dismiss this appeal by holding that the same to be hopelessly time-barred. Resultantly, the instant appeal is dismissed with no order as to cost.

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