

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-7081 of 2019

Petitioner : Standard Chartered Bank Pakistan Limited, through Mr. Muhammad Khalid Hayat, Advocate.

Respondent No.1 : Zubair Ahmed Chandio, in person.

Date of hearing : 15.01.2020

Before : Muhammad Ali Mazhar and Yousuf Ali Sayeed, JJ

JUDGMENT

YOUSUF ALI SAYEED, J. The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, impugning the Order made by the VIIth Additional and Sessions Judge Karachi (South) on 19.09.2019, dismissing Civil Revision No. 91/2018 (the “**Revision**”) that had been filed by the Petitioner as against the dismissal of its Application under Order 7 Rule 11 CPC by the VIIth Additional and Sessions Judge Karachi (South) in Suit No. 180 of 2017 (the “**Civil Suit**”) on 07.08.2018.

2. The Civil Suit has apparently been brought by the Respondent No. 1 disavowing any nexus with one of two American Express Credit Cards issued in his name by the Petitioner, on the basis that the same had not been applied for, received or used by him, with final relief being elicited as follows:
 - a. To declare that alleged Credit Card bearing No. 3762 9471 6527 515, has fraudulently issued in the name of the Plaintiff with wrong address and false cell number is illegal, null, ab-initio and void, and the Plaintiff is not liable to pay such amount of Rs. 2,07,641/- to the Defendant’s Bank at all.

- b. To restrain the Defendants, their agents, subordinates, employees, workers, or any other person who act on behalf of the Defendants to not to harass, humiliate, pressurize, blackmail the Plaintiff as well as restrain them from demanding alleged amount of Rs. 2,07641/- from the Plaintiff, as the said amount was utilized and withdrawn by some corrupt Bank's staff by using alleged Credit Card bearing No. 3762 9471 6527 515, in any manner whatsoever in nature till the final disposal of this Suit.
 - c. Costs of this Suit or any other / further relief which this Honorable court may deem fit & proper.
3. It is pertinent to mention that prior to the Civil Suit, the Respondent No. 1 had filed Suit No. 4 of 2009 (the "**Banking Suit**") under the Financial Institutions (Recovery of Finances) Ordinance 2001 (the "**Ordinance**") seeking similar relief, but the plaint had been returned vide Order dated 08.11.2016 by the Banking Court No. 2 at Karachi (the "**Banking Court**") on the finding that the matter did not fall within the scope of the Ordinance and its jurisdiction, as circumscribed thereunder, it being opined that the facility of a credit card did not fall within the definition of the term "finance", hence there being no relationship of "financial institution" and "customer" between the Petitioner and Respondent No. 1.
4. It is in this backdrop that the Respondent No.1 then proceeded to institute the Civil Suit, which was met by the Petitioner's Application under Order 7, Rule 11, seeking rejection of the plaint on the following grounds: -
- (a) That the Civil Suit was barred by limitation.
 - (b) That the ordinary civil court had no jurisdiction as the matter fell within the definition of the term "finance", as contemplated under Section 2(D) (ii) of the Ordinance, hence fall within the exclusive domain of a banking court.
 - (c) That the Civil Suit was even otherwise barred in terms of the Specific Relief Act, as the Plaintiff had sought declaration and injunction without seeking further consequential relief.

5. Learned counsel for the Petitioner submitted that the learned judge of the Banking Court had erred in dismissing the Banking Suit, and had done so of his own accord without any objection as to jurisdiction having been raised by the Petitioner. He contended that the proper course of action that ought to have been followed by the Respondent No. 1 was to have appealed the Order dated 08.11.2016 rather than filing the Civil Suit, and that too through a different plaint from that which been returned. He invited attention to the Order of 08.11.2016, wherein the issues settled in the Banking Suit were reproduced, so as to demonstrate that no issues on the point of jurisdiction had been framed. He submitted that, even otherwise, parties could not either confer upon or divest jurisdiction from a court and while considering the Application under Order 7 rule 11, CPC, the learned Senior Civil Judge had merely relied upon the aforementioned Order for return of the plaint in the Banking Suit as a definitive finding on the aspect of jurisdiction without further application of mind on such question or the other contentions raised from the standpoint of limitation and failure to seek consequential relief.

6. Conversely, the Respondent No.1 merely reasserted the stance taken in terms of the plaint filed in the Civil Suit and denied having applied for and/or used the particular credit card in respect of which that action had been brought, and disclaimed all liability in that regard.

7. Having considered the matter, from a perusal of the Order made in the Civil Suit on 07.08.2018 it transpires that the same essentially turns on the finding of the Banking Court, it being observed by the learned Senior Civil Judge that *“the main contention of the learned counsel for the defendants is that subject matter does not fall within civil dispute and is exclusively triable by the Banking Court, therefore this court has no jurisdiction to deal with the subject matter, I am of the view that Honourable*

Banking Court No. II, Karachi has already decided this issue of jurisdiction as discussed above and such order has not been challenged by the defendant and by the Plaintiff”, and in the ensuing Revision, the learned Additional District Judge has also apparently followed the same train of thought and confined himself accordingly.

8. In this regard, it merits consideration at the outset that the onus lay solely on the Respondent No.1 in his capacity as the Plaintiff in the Banking Suit to challenge the Order of the Banking Court, and the Petitioner’s inaction in that regard is not of consequence. The learned Senior Civil Judge has based his finding on the point of jurisdiction entirely on the Order made on 08.11.2016 by the presiding officer of the Banking Court and has also not returned any finding on the further points that were raised by the Petitioner for consideration under Order 7 rule 11, CPC, with such lapse remaining unaddressed at the stage of the Revision.

9. Whilst this Court does not normally interfere with the findings of the civil courts in in exercise of its jurisdiction under Article 199 of the Constitution; under the peculiar circumstances of the matter at hand and keeping in mind that the contentions raised by the Petitioner have not in fact been properly addressed at the level of the fora below, we consider it appropriate to remand the Revision to the learned Additional District Judge for decision afresh. The Petition stands disposed of on such terms.

JUDGE

JUDGE

Karachi
Dated _____