

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1st Appeal No. D – 35 of 2020

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Date of Hearing: **06-10-2021**

Date of Decision: **06-10-2021**

Mr. Faheem Majeed Memon Advocate for the Appellant
None for Respondents No.1 & 2.

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this 1st Appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, (“Ordinance”), the Appellant / Bank has impugned judgment dated 12.11.2020, passed by learned Banking Court-II, at Sukkur, whereby Suit No.434 of 2019 filed by the Appellant has been dismissed as being time barred.

2. Learned Counsel for the Appellant submits that the impugned judgment is not in accordance with law; that none had turned up to defend the Suit and Respondents were declared ex-parte; that though the loan was extended on 19.12.1991; however, an amount of Rs. 1,58,400/- was repaid on 20.05.2019, and limitation would start from such date of last payment, therefore, Suit was within time as the default is admitted pursuant to the Bank Statement. In support, he has relied upon *Shaheen Enterprises v Allied Bank Limited* (**2019 CLD 55**), *State Life Insurance Corporation of Pakistan v. Arjan Ram* (**PLD 2003 Karachi 523**) and *S.M.E Leasing Limited v. Messrs Umar Knitting* (**2011 CLD 1144**).

3. Insofar as the Respondents No.1&2 are concerned, despite best efforts, they could not be served; whereas, they were also *ex parte* before the Banking Court.

4. We have heard Appellant's Counsel and perused the record.

5. It appears that Appellant filed Suit for recovery of Rs.9,65,888/- against the Respondents No.1 & 2 and in the plaint, it was stated that the Respondents applied for the finance facility and accordingly an agricultural loan was extended to the tune of Rs.2,74,400/- under L.C No.085933 through pass books Nos. 565580 and 565579 on 19.12.1991. It is further stated that the Respondents also executed finance documents and after having availed the finance facility, failed to repay the same and thereafter Suit in question was filed on 19.09.2019. Along with the plaint, statement of account was filed and was also exhibited in the evidence; however, learned Banking Court came to the conclusion that the finance was availed on 19.12.1991 and after expiry of 12-years, nothing was done by the Appellant whereas, the Suit was filed on 19.09.2019; hence it was time barred, notwithstanding, repayment made on 29.05.2019 as it was also after expiry of limitation period for filing of Suit for recovery.

6. From the plaint it is clear that the Appellant has failed to specifically plead and state the relevant dates for the purposes of accrual of cause of action; rather in a very generalized manner, the plaint has been drafted without touching upon this crucial aspect of the matter. In Para 10 it has been stated "*that cause of action accrued to the plaintiff bank against the defendants as stated in Para Nos.1 to 9 Supra of the plaint and it continues to accrue till today.*" This in fact is not a proper disclosure of cause of action; rather is an attempt to keep it evasive and to mislead the Court. It seems that the entire case of the Appellant, and so argued as well, is that since a repayment of Rs.

1,58,400/- was made on 20.05.2019; hence, the Suit was within the period of limitation from such date. Learned Counsel for the Appellant while confronted, has argued that this is a case of mortgage and therefore no limitation runs; however, this contention is entirely misconceived. It may be true that limitation in a Banking Suit, normally does not run from the date of disbursement of loan; but from the last date of payment or default; however, this is only true when such last payment has been otherwise made within the applicable limitation period. Under the Limitation Act, 1908, in cases of Bonds¹, any Bill of Exchange², Promissory Notes³ and like instruments, the period of limitation is three (3) years from the date so specified in the instruments. In this case a loan agreement, Certificate of Charge Creation and surrender of Agricultural Pass Books have been signed and or handed over to the Appellant; however, since this is case of mortgage of some agricultural land and its produce, the limitation would not be three years; but twelve years⁴ from the date when money became due. Therefore, even if the maximum limitation period of 12 years is applied, admittedly from the date of disbursement of loan in the year 1991 onwards, nothing was done by the Appellant Bank. At least there is nothing on record to rebut this factual aspect. In fact, on perusal of the plaint, it appears that the same is silent on this very crucial aspect. It has not been stated that what happened during the period from 1991 till 20.05.2019 when purportedly some amount was deposited by the Respondents. This amount, admittedly, was deposited after expiry of the period of limitation of 12 years. It is settled law that acknowledgement, if any, in terms of section 19 of the Limitation Act, can be relied upon only if the same is within the prescribed period of limitation, and not otherwise.

¹ See Articles 66 to 68

² See Articles 69 to 72

³ See Articles 73 to 80

⁴ See Article 132 and its explanations.

Any acknowledgment in any manner, beyond the period of limitation is of no help. Even if the payment was made by the Respondents on 20.05.2019, this would not extend the period of limitation any further, and it will not be counted from such date. This case appears to be of a continuous default since disbursement of the loan; as in the entire period from 1991 to 2019 (when purportedly some payment was made), neither any payment was made; nor it is the case of the Appellant that they ever demanded the same in any manner. It is also not the case of the Appellant that from 1991 till 2019 there was any acknowledgment and/or undertaking by the Respondents to make payment of the amount in question. During this period, as per contents of the plaint, it seems the Appellant remained silent and it only realized that a recovery Suit is to be filed, when purportedly certain amount was paid on 20.05.2019. This cannot in any manner extend the period of limitation. Therefore, if any acknowledgement, after expiry of limitation, as alleged by the bank has been made by respondent, still the suit cannot be considered to be within limitation, because once the limitation has expired and no acknowledgment has been made within the period of limitation, any acknowledgment made after the expiry thereof, would not extend the time⁵. It is improbable that a banking institution would make verbal demands and the acknowledgment would also be of that nature; besides, the alleged acknowledgments in terms of section 19 of the Limitation Act, must only be in writing and that too should have been made within the period of limitation, but nothing in this behalf has been brought on record⁶. This reflects badly on the Appellant Bank, which is a Government owned entity to promote and facilitate agricultural industry, and appears to be a

⁵ International Business Centre v Habib Credit and Exchange Bank Limited (2004 CLD 1552)

⁶ Pakistan Industrial Credit & Investment Corporation Ltd., v Arif Noor (2009 CLD 1428)

case of gross negligence on the part of its officers and its recovery department.

7. Moreover, under the Ordinance, Section 24 provides that save as otherwise provided in this Ordinance, the provisions of Limitation Act shall apply to all cases instituted or filed in Banking Court after coming into force of this Ordinance and a Suit under section 9 may be entertained by the Banking Court after period of limitation, prescribed therein has expired, if the plaintiff satisfies the Banking Court that there was sufficient cause for not filing the Suit within the stipulated time. The record reflects that no such application for seeking this otherwise discretionary relief was preferred by the Appellant before the Banking Court, whereas, even otherwise, the learned Banking Court after going through the record placed before it, was fully justified in holding that the Suit was time barred and was liable to be dismissed. The impugned order, is thus, correct in law and does not warrant interference by this Court. The Appeal fails; and is hereby dismissed.

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