

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Revision No. S – 28 of 2005**

**United Bank Limited.....Applicant**

**Versus**

**M/s Muslim Commercial Bank Limited & others.....Respondents**

Date of Hearing: **31-01-2022**

Date of Decision: **31-01-2022**

Mr. Mukesh Kumar G. Karara, Advocate for the Applicant.

Mr. Ashok Kumar K. Jamba, Advocate for the Respondents No.1 to 3.

**ORDER**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision, the Applicant has impugned Order dated 23.11.2004, passed by Additional District Judge-IV, Ghotki at Mirpur Mathelo in Civil Misc. Appeal No.13 of 1998 (*UBL v. M/s MCB and others*) through which the Order dated 19.01.1998, passed by Senior Civil Judge, Mirpur Mathelo in F.C Suit No.15 of 1997 (*UBL v. MCB and others*), whereby the Plaintiff of the Suit was returned, has been maintained.

**2.** I have heard both the learned Counsel and perused the record.

**3.** It appears that the Applicant filed an ordinary Civil Suit for recovery of money against the Respondents and the Trial Court vide order dated 19.01.1998 without assigning any reasons, and only by holding that the matter relates to the Banking Court; returned the plaint for its presentation before the Court having jurisdiction. The Applicant being aggrieved filed a Civil Appeal and the learned Appellate Court has maintained the said Order.

**4.** As to the order of the trial Court is concerned, it is an order without any reasons; rather, appears to be a communication of the decision of return of plaint to the Applicant. On the other hand, on perusal of the Order of the Appellate Court, it appears that the learned Appellate Court has decided the controversy by relying upon the Financial Institutions (Recovery of Finances) Ordinance, 2001 under the assumption that when the matter was being decided by the Appellate Court, said Ordinance was

in field. However, for the purposes of deciding the Civil Appeal, the Appellate Court ought to have considered the provisions of the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997, which was the law prevalent when the order was passed by the trial court, notwithstanding the fact that the underlying provisions are almost analogous.

**5.** Nonetheless, perusal of the record reflects that the Applicant had filed a simple Suit for recovery, alleging some fraud on the part of the Respondents, and admittedly there is no relationship between the parties as to the customer; borrower, or for that matter regarding grant of any loan or advance. Simply for the reason that the Applicant had sued the Respondents Bank does not *ipso facto* affirms or vests jurisdiction in the Banking Court. Both the Courts below have failed to decide the issue vis-à-vis the Act then in force and have not touched upon this aspect of the matter. As to the special provisions conferred upon the Banking Courts, it is settled law that the primary ingredients of relationship of a customer along with grant of any loan or finance must be present and only then the Banking Court can assume the jurisdiction. Reliance in this regard can be placed on the cases of ***Procter & Gamble Pakistan (Pvt.) Limited***<sup>1</sup>; ***INVEST CAPITAL INVESTMENT BANK LIMITED***<sup>2</sup> and ***Dr. Bhagwan Das***<sup>3</sup>. In the matter in hand the Courts below have not taken any pains to either examine the

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<sup>1</sup> **(2007 CLD 1532)** 17. The above analysis of the meaning of the word "customer" as defined in section 2(c) of the Ordinance clearly leads to the conclusion that the word "customer" means and includes (a) a person to whom finance has been extended directly by a financial institution; (b) a person on whose behalf a financial "institution undertakes to make payment to a third party e.g. under a Guarantee or a Letter of Credit; and (c) a person who has taken upon himself the obligation to repay to the financial institution the defaulted sum in his capacity as surety or indemnifier. Therefore, only these three categories of persons come within the definition of "customer" and only they can sue or be sued under section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001. No person, no matter in what other capacity he is connected with a financial facility, if he does not fall within the definition of a "customer" as defined under section 2(c) of the Ordinance, 2001, he can neither sue nor be sued under section 9 of the Ordinance, 2001 and the legal remedy for and against, him lies before ordinary Civil Court.

<sup>2</sup> **(2015 CLD 1828)** 8. ....It will not be out of place to mention that for a Suit to be maintainable before a Banking Court in terms of the 2001 Ordinance, there must exist a relationship of Customer and Financial Institution between the parties, whereas there must have been a finance facility, which must have been availed by the Customer and the dispute must have arisen between the Customer and the Financial Institution with regard to violation or breach of any obligation required to be performed or honored by any of them as defined in section 2(e) of the 2001 Ordinance, which again must be in respect of the Finance as defined in section 2(d) of the 2001 Ordinance.

9. Perusal of the aforesaid definition of section 2(c) of the 2001 Ordinance reflects that a Customer includes a person to whom finance has been extended by a Financial Institution and also includes a person on whose behalf a guarantee or letter of credit has been issued by a financial institution, as well as a surety or an indemnifier. From the aforesaid definition it emanates that there are in fact three categories of persons who can be called or termed as a Customer within the contemplation of the 2001 Ordinance. First, a person to whom finance is extended by a financial institution; second a person who avails non-fund based financial facility such as letter of credit; third and last a person who stands surety or indemnifier before a financial institution on behalf of a direct customer of the institution and in fact is somewhat different from a Customer of first two categories.

<sup>3</sup> 2021 CLD 406

relevant law; nor have discussed the same, whereas, even otherwise reliance has been placed on an altogether irrelevant case law which has no identical facts.

**6.** In view of hereinabove facts and circumstances of this case, it appears that both the Courts have erred in law by ordering return of the Plaint. Accordingly, this Civil Revision stands allowed and the impugned Order dated 23.11.2004, passed by the Appellate Court and the Order dated 19.01.1998, passed by the Trial Court are hereby set aside and the matter is remanded to the Trial Court, before whom the suit was filed and shall be deemed to be pending which shall be decided on merits after recording evidence, if any, in accordance with law.

**JUDGE**

Ahmad