

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

1<sup>st</sup> Appeal No. D – 17 of 2012

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Zulfiqar Ahmad Khan

Appellants : Zarai Taraqati Bank Limited and two others,  
through Mr. Fayaz Ahmed A. Soomro Advocate.

Respondents : Mst. Nawazi and 13 others,  
through Mr. Tariq G. Hanif Mangi Advocate.

Date of hearing : 26.10.2017.

**J U D G M E N T**

**NADEEM AKHTAR, J.** : Through this appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance XLVI of 2001, the appellants have impugned the judgment delivered on 07.08.2012 and decree drawn in pursuance thereof on 09.08.2012 by the learned Banking Court-I Sukkur, whereby Suit No.16 of 2005 filed by the respondents against the appellants for declaration and mandatory and permanent injunction was decreed as prayed with costs.

2. The case of respondents 1 to 14, as averred in the plaint of their above mentioned Suit, was that respondents / plaintiffs 1 to 6 were the legal heirs of late Eidan, respondents / plaintiffs 7 to 12 were the legal heirs of late Ahmed, and respondent / plaintiff No.13 was the legal heir of late Arbab ; the above named deceased Eidan, Ahmed and Arbab were brothers inter se ; on 20.04.2005, respondent No.12, who was the attorney of other respondents / plaintiffs, received a notice from appellant No.3 alleging that the respondents were liable to pay an amount of Rs.372,160.00 to the appellants towards the outstanding loan obtained by their deceased fathers. When the respondents approached the appellants, they were informed that their fathers had obtained a loan from the appellants in the year 1989 and in view of the default committed by the deceased, the respondents were liable to settle the said liability. The above information came as a shock to the respondents as their fathers had passed away between the period 06.01.1979 to 25.06.1984, much prior to the date of the alleged loan. In view of this position, they strongly disputed the above claim of the appellants, and requested them to withdraw the above notice. However, their contention was not accepted by the appellants who kept on pressing their claim against the respondents. In the above background, the Suit was filed by the

respondents praying for a declaration that the alleged loan was not obtained by their late fathers and as such they were not liable to pay any amount to the appellants, and also for a declaration that the notice for recovery issued by the appellants was void ab initio. Consequential relief of mandatory and permanent injunction was also sought by the respondents.

3. Application for leave to defend was filed by the appellants which was allowed on 01.04.2006 with the consent of learned counsel for the respondents / plaintiffs and ten issues were settled by the learned Banking Court, whereafter evidence was led by both the sides. After hearing the parties and examining the evidence produced by them, the Suit filed by the respondents was decreed as prayed with costs.

4. Mr. Fayaz Ahmed A. Soomro, learned counsel for the appellants, contended that the finance agreement and other charge documents executed by the deceased were sufficient to belie the claim of the respondents as presumption of truth was attached to all such documents and also as the respondents had failed to prove that the loan was not obtained by their deceased fathers or the finance and other documents in respect thereof were forged and fabricated. He further contended that in fact the appellants had successfully discharged their burden by proving that all documents filed and relied upon by them were executed by the deceased and that the deceased had availed finance facility in consideration thereof. It was submitted by him that this is a case of misreading and non-reading of evidence as the impugned judgment and decree are contrary to the material available before the learned Banking Court. It was urged by him that in view of the above, the impugned judgment and decree, being not sustainable in law, are liable to be set aside.

5. On the other hand, Mr. Tariq G. Hanif Mangi, learned counsel for the respondents, contended that the respondents had successfully discharged their burden before the learned Banking Court in proving that the alleged finance facility was not obtained by their late fathers as they had passed away much prior to the alleged date of finance. He further contended that material evidence produced by the respondents in this regard, such as, death certificates of the deceased, was not controverted or rebutted by the appellants. It was further contended by him that the appellants also failed in proving that the finance and other documents pertaining to the alleged finance were executed by the deceased. By strongly supporting the impugned judgment and decree, learned counsel prayed for dismissal of this appeal.

6. We have heard learned counsel for the parties and have perused the material available on record with their assistance. Ten issues were settled by the learned Banking Court with the consent of the parties including a specific issue as to whether the fathers of the plaintiffs / respondents had already expired prior to the sanction of the disputed loan. In order to prove this important and fundamental issue, heirship certificates, death certificates issued by Mukhtiarkar and death certificates issued by Chairman Union Council of Eidan, Ahmed and Arbab were produced by the respondents as Exhibits A, A/1, B, B/1, C, C/1, D, D/1 and D/2, showing their dates of death as 06.01.1979, 23.11.1981 and 25.06.1984, respectively. It is important to note that the genuineness and authenticity of the above documents produced by the respondents and the contents thereof, particularly the dates of death, were not disputed or challenged by the appellants as no objection was raised by them at the time of their production nor was there any suggestion from their side to the respondents' witness that any of the said documents was bogus or fabricated. Not only this, when the appellants' witness was shown the above documents produced by the respondents, he, instead of disputing the same, admitted the contents thereof. Moreover, the said witness of the appellants categorically admitted in his cross examination that the loan pertained to the year 1992-1993, thus contradicting the case of the appellants that the loan was granted in the year 1979 and further admitting the claim of the respondents that the deceased had passed away much prior to the date of the alleged loan.

7. We have noticed that the loan agreement dated 09.10.1989 filed and relied upon by the appellants was signed only by Ahmed, and Eidan and Arbab were not parties to the said agreement. Therefore, even according to the case set up by the appellants and the evidence produced by them, Eidan and Arbab did not avail any finance facility from the appellants.

8. In view of the above, we are of the view that evidence produced by the respondents remained unshaken and unrebutted and they had successfully discharged their burden in proving their case before the learned Banking Court. We are also of the view that the appellants failed in discharging such burden, which shifted upon them in view of the above, as they not only failed to question or rebut the above documents produced by the respondents, but they also did not produce the original pass books of the deceased although they were in possession of photo stat copies thereof. Another important aspect of this case is that the appellants admittedly never filed any Suit against any of the deceased,

and after their death, against their legal heirs / present respondents for recovery of the alleged loan. This fact was also noticed by the learned Banking Court. In our humble opinion, the impugned judgment and decree are well reasoned and they have been passed after proper application of mind and appreciation of evidence. As such, they do not call for any interference by this Court.

Foregoing are the reasons of the short order announced by us on 26.10.2017, whereby this appeal and the listed application were dismissed with no order as to costs.

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