

Judgment Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

First Appeal No. D – 15 of 2010

Present :

1. Mr. Justice Nadeem Akhtar
2. Mr. Justice Shahnawaz Tariq

Appellant : Habib Bank Limited, through Mr.Riazuddin Qureshi
Advocate.

Respondents : (1) Aijaz Ali Khaskheli, through Mr. Ishrat Ali Lohar
Advocate, and
(2) The Judge, Banking Court No.II, Hyderabad.

Date of Hearing : 12.02.2014.

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 Ordinance’**), the appellant has impugned the order passed on 06.05.2010 and the decree drawn in pursuance thereof by the Banking Court No.II Hyderabad in the appellant’s Suit No.73 of 2009, whereby the plaint in the appellant’s said Suit was rejected *suo moto* by the Banking Court on the grounds that it did not disclose cause of action and the appellant had suppressed material facts in the plaint.

2. The relevant facts of the case are that the appellant, being a financial institution, filed Suit No.73 of 2009 under Section 9 of the Ordinance against its customer / respondent No.1 before the Banking Court No.I at Hyderabad, for recovery of Rs.224,021.00. The case of the appellant, as averred in the plaint, was that respondent No.1 applied to the appellant for a finance facility for purchasing a vehicle, which was sanctioned by the appellant. The parties entered into a Lease Agreement, whereby the vehicle was leased to respondent No.1 by the appellant, and in consideration of such facility, respondent No.1 agreed to repay the amount of the facility to the appellant on the terms and conditions stipulated in the agreement, but respondent No.1 committed breach of his obligations. In the above background, the Suit was filed by the appellant for recovery of the aforementioned amount along with cost of funds thereon and liquidated damages. It was also prayed by the appellant that in case of failure in

payment of the decreed amount by respondent No.1, his immoveable and moveable properties be sold in order to recover the same.

3. After service of summons, respondent No.1 filed his application for leave to defend the Suit under Section 10 of the Ordinance. The allegations raised and the claim made by the appellant in his plaint, were denied by respondent No.1, and it was asserted that it was the appellant who had failed in fulfilling its obligations under the agreement.

4. Through the impugned order dated 06.05.2010, the plaint in the appellant's said Suit was rejected *suo moto* by the Banking Court on the grounds that it did not disclose cause of action and the appellant had suppressed material facts in the plaint. The impugned decree was drawn in pursuance of the said order.

5. Mr. Riazuddin Qureshi, the learned counsel for the appellant, submitted that the findings of the Banking Court are incorrect and contrary to the material that was on record. He submitted that despite the fact that the appellant had complied with the requirement of Section 9(2) of the Ordinance by filing statement of account along with its plaint, it was held in the impugned order that the plaint was liable to be rejected as statement of account had not been filed by the appellant. He argued that the plaint was rejected mainly on this ground, which, on the face of it, is incorrect and baseless. The learned counsel further submitted that the appellant had disclosed all the relevant and material facts in its plaint along with the disclosure under Section 9(3) of the Ordinance regarding the amount of finance, and had also filed all such documents with the plaint which supported the claim of the appellant. He argued that in view of the above, it was wrongly held by the Banking Court that material facts were suppressed by the appellant. It was urged that the plaint could not be rejected either *suo moto* or on any other ground, as it clearly disclosed cause of action and there were admissions on record on the part of respondent No.1 that the facility was availed by him from the appellant. It was prayed on behalf of appellant that the impugned order and decree, being illegal and not sustainable in law, be set-aside.

6. Mr. Ishrat Ali Lohar, the learned counsel for respondent No.1, opposed the submissions made by the learned counsel for the appellant and the grounds urged in this appeal. He contended that the Suit filed by the appellant was not maintainable either in law or on facts, and the plaint did not disclose any cause

of action, as alleged by the appellant or otherwise. He submitted that it is a well-settled principle of law that an incompetent Suit should be buried at the very inception in order to avoid wastage of precious time of the court and to save the parties from the rigours of unnecessary litigation. He further submitted that the plaint was rightly rejected by the Banking Court by following the above well-settled principle of law. The learned counsel supported the impugned order and decree, and prayed for the dismissal of this appeal.

7. We have heard the learned counsel and have also perused the material available on record with their assistance. In the impugned order, whereby the appellant's plaint was rejected *suo moto*, it was observed by the Banking Court that, prior to the filing of the Suit by the appellant, the present respondent No.1 had filed Suit No.22 of 2009 against the present appellant for declaration, settlement of account and damages ; and, in the said Suit, the application for leave to defend filed by the present appellant had been dismissed and the Suit had been decreed against it. It was further observed in the impugned order that there were number of admissions with regard to sanction of the finance facility to respondent No.1 by the appellant and deposit of amount by respondent No.1. The Banking Court opined that the appellant had disclosed the relevant details about the finance facility, but the plaint was not supported by a statement of account as required under Section 9(2) of the Ordinance. In view of the above, the Banking Court was of the view that the appellant had concealed material facts from the court. It was held in the impugned order that the plaint can be rejected in case material facts are concealed by the plaintiff ; and, the plaint can be rejected at any stage even after its registration, before framing of issues or while disposing of an injunction application. It was further held in the impugned order that the plaint of the appellant did not disclose any cause of action. In view of the above findings, the plaint of the appellant was rejected *suo moto* through the impugned order.

8. At the very outset, it may be observed that the Banking Court committed a serious error in law by taking note of the earlier Suit filed by respondent No.1 against the appellant, and further by being influenced of the order of dismissal of the appellant's application for leave to defend and the decree passed against the appellant in the said Suit. It is now well-settled that where separate Suits are filed against each other by the financial institution and the customer, applications for leave to defend filed in both Suits are to be heard and decided separately on their own merits ; and, the order passed on one application for leave to defend in one Suit does not affect or prejudice the merits or demerits of

the application for leave to defend in the other Suit. In the instant case, the Banking Court ought to have decided the respondent No.1's application for leave to defend in the Suit filed by the appellant without having being influenced with the fact that the application for leave to defend filed by the appellant had been dismissed in the Suit filed by respondent No.1, and the said Suit had already been decreed against the appellant.

9. The findings of the Banking Court that the plaint can be rejected where material facts are concealed by the plaintiff ; and, the plaint can be rejected at any stage even after its registration, before framing of issues or while disposing of an injunction application, are not sustainable. It is to be noted that the plaint can be rejected only under Order VII Rule 11 CPC if it does not disclose a cause of action as provided in Clause (a) thereof ; or where from the statements made in the plaint, the Suit appears to be barred by any law, as provided in Clause (d) thereof. Clauses (b) and (c) of Order VII Rule 11, which relate to valuation of the Suit and the payment of court fee, are not relevant in the instant case. Concealment of material or other facts is not one of the grounds for rejection of the plaint enumerated in Order VII Rule 11 CPC, nor can the plaint be rejected on such ground. Therefore, the appellant's plaint could not be rejected on this ground. We have noticed that the appellant's Suit was at the stage of hearing of the application for leave to defend filed by respondent No.1, but the same was not considered at all by the Banking Court, and the plaint was rejected *suo moto*. The Banking Court completely failed to appreciate that the Suit was not a Civil Suit, but was a Banking Suit under the Ordinance, which is a special law. In Banking Suits under the Ordinance, if the defendant succeeds in raising any substantial question of law or fact, at best leave can be granted to him to defend the Suit, but the plaint cannot be rejected nor can the Suit be dismissed before deciding his application for leave to defend, when the main Suit is not fixed for hearing. This view finds support from the Division Bench cases of (1) National Bank of Pakistan V/S Yaqoob Rice Mills, **2002 CLD 1306**, (2) Shaikh Nazir Ahmed V/S House Building Finance Corporation, **2002 CLD 1634**, (3) Waheed Corporation V/S Allied Bank Limited, **2003 CLD 245**, (4) Malik Sultan Mahmood V/S SME Bank Ltd., **2003 CLD 724**, (5) Sheikh Mohd. Kashif V/S Askari Leasing Ltd., **2004 CLD 1645**, (6) Habib Bank Limited V/S The English Engineering Co. & others, **2005 CLD 292**, (7) Muhammad Husain V/S SME Bank Ltd., **2005 CLD 323**, and (8) Manzoor Ahmed V/S Agricultural Development Bank of Pakistan, **2005 CLD 653**.

10. Having discussed the aspect of rejection of the plaint in a Banking Suit or dismissal of such Suit without first deciding the defendant's application for leave to defend, we would like to point out that there is only one exception where the plaint can be rejected in a Banking Suit under Order VII Rule 11 CPC, or the Suit itself can be dismissed before deciding the application for leave to defend filed by the defendant. Such jurisdiction can be exercised by the Banking Court even *suo moto* only where the plaint does not disclose any cause of action or where the Suit is barred by any law. We have already held that the plaint could not be rejected on the ground that material facts were suppressed by the appellant, and the appellant had complied with the requirement of Section 9(2) of the Ordinance by filing a statement of account along with the plaint. A perusal of the plaint shows that the facts averred and the allegations made in the plaint did constitute a cause of action in favour of the appellant, and there was no such statement therein from which it could be assumed that the Suit was barred by any law. It is a well-established principle of law that while deciding the question of rejection of the plaint, the court has to see as to whether or not the plaintiff would be entitled to the relief prayed for if the averments and allegations made in the plaint are deemed to be correct ; and, if the answer is in the affirmative, then the plaint cannot be rejected. We have no hesitation in holding that the plaint was wrongly rejected by the Banking Court. The impugned order and decree, being bad in law and having been passed contrary to the well-settled principles of law, cannot be allowed to remain in the field, and as such are liable to be set-aside.

11. As a result of the above discussion, this appeal is allowed with costs. Consequently, the impugned order and decree are set-aside. The matter is remanded back to the learned Banking Court with a direction to decide the application for leave to defend the Suit filed by respondent No.1 strictly in accordance with law after notice to the parties within thirty (30) days from the receipt of this judgment. The office is directed to communicate this judgment forthwith to the learned Banking Court for compliance. Foregoing are the reasons of the short order announced by us in this appeal on 12.02.2014.

J U D G E

J U D G E