

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1st Appeal No. D – 12 of 2022

Date of hearing	Order with signature of Judge
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Hearing of case

1. For hearing of main case
2. For hearing of CMA No.429/2022 (Stay)

24-05-2022

Mr. Abdul Rahman Faruq Pirzada along with Mr. Ghulam Hyder Daudpoto, Advocates for the Appellant.
Mr. Ashok Kumar K. Jamba, Advocate for Respondent No.3.

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Through this Appeal, the Appellant has impugned order dated 24-02-2022 passed by the Banking Court-II at Sukkur in Suit No.285 of 2021. It appears that the said order has been passed on an application under Section 151 CPC filed by the Defendants / Respondents. The operative part of the said order reads as under:

“Having heard the learned counsel for the parties and after perusal of the record, the learned counsel for the plaintiff bank was inquired as to how the amount shown as outstanding against the applicants/defendants party is due against them, to which he submitted that this can only be explained by the Manager of the plaintiff bank, on which two notices were issued to the Manager of the plaintiff bank viz. on 24.01.2022 and 12.02.2022 but despite of the service of these notices, the plaintiff (Manager) has not appeared before this Court in-order to satisfy as to how the amount shown with objections in prudential statement viz. Rs.13,45,770.03ps. is outstanding against the applicants/defendants party. Whereas perusal of the record shows that the Manager of the plaintiff bank himself received the afore mentioned two cheques vide statement dated 29.01.2022 without any objection towards the repayment of finance and other charges, hence now the outstanding amount shown with the objections and claimed by the plaintiff bank is not justified.

Under these circumstances, since the amount claimed by the plaintiff bank towards repayment of the finance and other charges is received by the Manager of the plaintiff bank without any objection, hence the suit of the plaintiff become in-fructuous and the same is hereby dismissed with directions to the plaintiff bank to return the original documents involved in the instant finance to the applicants/ defendants party.

The application stands disposed of accordingly in the above terms.”

On perusal of the aforesaid order, we have not been able to understand as to how the learned Banking Court can decide an application under section 151 CPC in a Banking Suit filed under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 in such a manner. If the Defendants / Respondents had paid the amount as claimed, then the only way-out for them was by way of a compromise application and passing of a compromise decree, which has not been done. On mere statement of parties, it cannot be held that the due amount has been fully paid; nor it is the job of the Banking Court to decide matters in such manner and then hold that the Suit has become infructuous. The suit could only be disposed off other than on merits, when it is either withdrawn by the Plaintiff; or is compromised by the parties to a Suit; or may be for Non-prosecution. But certainly not on applications under Section 151 CPC in the above manner.

In view of hereinabove facts and circumstances, we have no hesitation in holding that Banking Court has fallen in error in entertaining an application by the Defendant on the ground that the disputed amount has been paid; hence, the impugned order is hereby set aside and the Suit shall be deemed to be pending before the Banking Court-II at Sukkur, which shall be proceeded and decided in accordance with law.

The Appeal is **allowed** with pending application in the above terms.

J U D G E

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Abdul Basit