

IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Jawad Akbar Sarwana

**High Court Appeal No.74 of 2017**

M/s Standard Chartered Bank Pakistan Limited  
Versus  
Mst. Fatima Ehsan Al Ghori (since deceased) through LRs.  
.....

Date of hearing: 05.12.2023  
Date of short order: 05.12.2023  
Date of Reasons: 12.12.2023

Syed Noman Zahid Ali, Advocate for the Appellant.

M/s. Khalid Javed and Munawar-uz-Zaman Juna, Advocates  
for Respondents.

.....

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

**Muhammad Shafi Siddiqui, J.-** A suit bearing No.480/1995 for recovery of amount and damages was filed by the respondent against the appellant's predecessor, who was maintaining foreign exchange account (Dollar Account). Predecessor, being Bank of America, was originally merged in Union Bank per Bank Merger Scheme dated 30.06.2000, and was allowed to be substituted on 25.05.2004. Again on 27.05.2009 it was substituted as Standard Chartered Bank Limited, the present appellant. The cause for filing the suit was/is referred in para-6 of the plaint which is allegedly a signed letter of the plaintiff/ respondent of 9<sup>th</sup> June, 1991 wherein she was shown to have made a request for the issuance of Dollar Bearer Certificate of US\$-40,000/- available in her account. This document was seriously disputed by the respondent No.1 on acquiring knowledge of the available fund in her account and in consequence whereof, notices were exchanged but all in vain, hence a suit was filed.

2. The cause triggered when on 20.03.1995 a letter along with statement of account and the alleged letter of the respondent for issuance of Dollar Bearer Certificate was provided to the respondent. She filed suit on receipt of information followed by issuance of summons and notices and the appellant, being defendant, filed written statement and consequently issues were framed on 18.08.1996. The issues are reproduced as under:-

1. *Whether the plaintiff in January, 1991 had remitted an amount of US\$ 39,323.00 in her Dollar Saving Account No.6208-015455-091 maintained with the defendant Bank at Karachi?*
2. *Whether the plaintiff had authorized the defendant Bank through letter dated 9 June 1991 to issue Dollar Bearer Certificate of the value of US\$ 40,000.00 from her Dollar Saving Account?*
3. *Whether the defendant has given Dollar Bearer Certificates of the value of US\$ 40,000.00 to the plaintiff in June 1991?*
4. *Whether the letter dated 9 June 1991 (Annexure F to the plaint) bears the signatures of the plaintiff?*
5. *Whether plaintiff had issued any cheques of her aforesaid account for issuance of Dollar Bearer Certificates of U.S\$ 40,000.00?*
6. *Whether the plaintiff is entitled to recover US\$ 40,000.00 and damages/compensation of Rs.20,00,000.00 from the Defendant?*
7. *What should the decree be?*

3. After framing of issues, the relevant documents were not filed for admission and denial, though only a list of documents is available at page-23 of R&P, and hence only copy of the letter of 9<sup>th</sup> June, 1991 was confronted with the respondent in cross-examination, which she denied to have signed. One more witness was examined by the respondent/plaintiff that is, Dr. Iqbal Munawar Ghorri, being son of the plaintiff/ respondent, who was also subjected to cross-examination and after conclusion of the evidence, record shows that opportunities were provided to the appellant, as being defendant, however, an attempt was made to examine a witness but he could not present himself and

adjournments were obtained whereafter their side was closed. The cross-examination of witness of plaintiff/ respondent was concluded on 02.06.2004, whereas, on 03.09.2013 (after nine years) the side of the appellant was closed to lead evidence.

4. The core issue is the issue No.4 that is, whether letter dated 9<sup>th</sup> June, 1991 (annexure "F" to the plaint) bears the signatures of the plaintiff/ respondent. The respondent recorded her evidence by filing affidavit-in-evidence and she was subjected to cross-examination. The affidavit-in-evidence of the respondent/plaintiff is available at page-143, whereas, the cross-examination at page-133. She has categorically denied the signatures on the said letter of 9<sup>th</sup> June, 1991.

5. Order dated 03.09.2013 referred in para-3 above is reproduced as under:-

*For hearing of CMA No.11291/2009  
For hearing of CMA No.3858/2004  
For evidence.*

03.09.2013

*Mr. Khalid Jawed, advocate for the plaintiff.  
Syed Noman Zahid Ali, advocate for the defendant.*

*1,2 & 3. The order dated 02.06.2004 reveals that the plaintiff closed his side on that date, whereafter the matter was adjourned to 26.08.2004 for the defendant's evidence. The learned counsel for the plaintiff has invited my attention to the orders passed by this Court on 29.09.2005, 30.05.2006, 27.05.2009 and 03.04.2013. On 29.9.2005 and 30.05.2006, the learned counsel for the defendant informed the Court that the officer of the defendant bank ; namely, Haseeb Khan, who was to depose on behalf of the defendant, had left the defendant bank and had joined another bank. It was requested by the learned counsel that summons be issued to the said former officer of the defendant bank, and he undertook to furnish his complete and latest address for such purpose. Thereafter, the recording of evidence of the defendant could not commence as the said witness was unavailable due to one reason or the other. On 27.05.2009, the matter was adjourned as the said witness had sent a medical certificate with a request for adjournment. On 03.04.2013, further time was sought by the defendant's learned counsel to call the witness. On that date, last chance was given to him and one month's time was granted to call the witness in Court. It was specifically mentioned in the said order dated 03.04.2013 that the side of the defendant will be closed, in case the witness does not appear on the next date of hearing.*

*Today the learned counsel for the defendant has made a request for adjournment on the ground that defendant's witness Haseeb Khan is suffering from mental disorder, and as such another officer of the defendant, who is present in Court, will be examined in place of Haseeb Khan. The learned counsel submits that the officer present in Court is not ready to give evidence on behalf of the defendant as he is on leave.*

*CMA No.11291/2009, which is listed today and is pending since 24.11.2009, was filed by the defendant for issuance of commission for examination of its said witness Haseeb Khan. CMA No.3858/2004, which is also listed today, was filed by the defendant in May 2004, seeking permission to file photo stat copies of documents.*

*The fact that the defendant is still pressing its CMA No.11291/2009 shows that the defendant still wants to examine Haseeb Khan through commission. It is to be noted that evidence of Haseeb Khan was partly recorded. The prayer made by the plaintiff in its said application for examination of Haseeb Khan through commission is contradictory to the stand taken by the defendant today before the Court that another witness will now give evidence on behalf of the defendant in place of Haseeb Khan. The said application has neither been withdrawn by the defendant, nor has the defendant filed any application seeking substitution of its witness. The defendant was granted more than sufficient time and opportunity to lead evidence by bringing its witness, but the conduct of the defendant since the year 2004, when the matter was adjourned for its evidence, shows that the matter is being delayed unnecessarily only because of the absence of the defendant's witness. In view of the above, the defendant is not entitled to any further concession as the matter cannot be delayed indefinitely for want of the defendant's witness. The order dated 03.04.2013 is very much clear, and as per the said order, the side of the defendant was to be closed in case of the absence of its witness.*

*In view of the above, both the listed applications filed by the defendant are dismissed, and the side of the defendant is hereby closed. Let this matter be now fixed for final arguments within two weeks from today.*

6. The said order dismissed two applications (1) CMA No.11291/2009 under Order-XXVI Rule-2 CPC for appointing commissioner to examine witness of appellant Mr. Haseeb Khan and (2) CMA No.3858/2004 for producing “photocopies” of documents disclosed in the list of documents filed by appellant after framing of issues. Thus, the said order of closing the side of the appellant also includes a dismissal of application for bringing copies of the documents on which defendant relied upon, was challenged in High Court Appeal No.130/2013 on 30.09.2013, however, it was withdrawn on 16.02.2016 and the order dated

03.09.2013 has attained finality. Prior to filing of appeal No.130/2013, on 27.09.2013 an application for recalling the same order (reopening side for evidence) was also filed which was dismissed along with suit in terms of impugned judgment.

7. The appellant's case is that the bank/appellant was not permitted or allowed to record evidence and that the crucial document of 9<sup>th</sup> June, 1991 as being a copy was not considered along with expert report. The letter of 09.06.1991 as being "copy" was sent to the handwriting expert by the appellant on their own and the report of handwriting expert dated 21.05.1995 (prior to filing of the suit) surreptitiously placed in the list of documents in R&P along with CMA No.3858/2004. This report is hardly of any value, as it was obtained by bank on its own and secondly it was obtained on a photocopy of a document which goes to the root of the case. This alleged report was never presented either by expert or by the witness of the Bank. Since the witness never appeared, the question of secondary evidence does not arise<sup>1</sup>.

8. Respondent concluded their part of evidence on 02.06.2004 and it is almost after lapse of 09 years when the side of the appellant was closed on 03.09.2013 and during this period numerous opportunities were given but all in vain. Some of the adjournments sought and granted are as under:-

23.09.2004

*Mr. Khalid Javed for plaintiff.  
None present for the defendant.*

*Learned counsel for the defendant is called absent. Defendants' witnesses are also called absent. Defendants' witnesses are required to be present on the next date of hearing. Adjourned.*

16.12.2004

*Mr. Khalid Javed, Advocate for the plaintiff.  
Mr. S.A. Pinger, Advocate for the defendant.*

---

<sup>1</sup> AIR 2011 SC 1492.

*Learned counsel for the Defendant submits that the witness was proposed to be examined, since who is serving in another Bank, he could not inform him. He is directed to ensure the presence of said witness on the next date of hearing. At his request, the matter is adjourned to a date in office.*

2.5.2006

*Mr. A.H. Mirza, Advocate for the defendant.*

*The summons issued to the defendant have returned un-served. Mr. A.H. Mirza submits that the bank is locating correct/ present address of the witness and requests for adjournment to enable it to obtain such address. Adjourned.*

30.05.2006

*Mr. Asif Ali Advocate holding brief for Mr. Khalid Javed, Advocate for the plaintiff.*

*Mr. A. Sattar, Pinger, Advocate for the defendant.*

*Learned counsel for the defendant request for some more time to locate the fresh address of the witness, namely, Haseeb Khan. Learned counsel further states that the witness was partly examined and thereafter left the services of bank and requests that the office may be directed to issue summons to the witness on supply of proper address of the witness Haseeb Khan. The office will issue summons to the witness for the next date on supply of fresh address by the learned counsel for the defendant. Adjourned to a date in office.*

29.01.2009

*Mr. Aamir, Advocate holding brief for Mr. Khalid Javed, Advocate.*

*Mr. A.H. Mirza, learned counsel for defendant submits that the witness who was required to be produced, is no more in service of the bank, therefore, some other witness to be produced in his place. He requests for some time in this regard. Adjourned to a date in office.*

14.4.2009

*Mr. Ghulam Murtaza, learned counsel for the defendant, submits that his witness is not in attendance due to unavoidable circumstances, therefore, he requests for time which is granted. He is required to bring the witness on the next date of hearing positively. None is present for the plaintiff. Adjourned to 06.5.2009.*

03.04.2013

*Mr. Khalid Javed, Advocate*

*Mr. A.S. Pinger, Advocate*

*Learned counsel for defendant request for time to call witness. As a last chance, one month's time is granted to call witness in court failing which side of defendant will be closed.*

Needless to mention that on numerous occasions the matter was also discharged so the adjournment dates does not give a complete picture of time granted to appellant.

9. The case of the appellant revolves around a letter of 9<sup>th</sup> June, 1991 which was never produced after framing of the issues, in fact even at the time of confrontation during cross, only a copy was attempted to be shown which the respondent has denied to have signed. It is not in dispute insofar as the issue No.1 is concerned that the substantial amount of 39,323.00 US dollars was remitted in the account of the respondent which is reflected in the statement of account and credited in the account of respondent per Exhibit P/2 dated 21.01.1991, whereas some amount of US\$ was already available. Exhibit P/6 shows that US\$-3,957.26 were available on 10.01.1991 and US\$-39,323 were credited in the account on 21.01.1991, whereas, US\$-1,003.75 was the credit return on 02.07.1991. The only question is whether the appellant/defendant bank was authorized by letter of 9<sup>th</sup> June, 1991 to issue Dollar Bearer Certificate of US\$-40,000.00, which left only US\$-3869.67 in the account, which burden has not been discharged by the appellant. Even the expert, from whom unilateral report was obtained, was never examined and/or summoned. No one is disclosed to have “seen” the original of the said letter who could have deposed orally and the requirement to lead secondary evidence has not been fulfilled as required under Section-75 and 76 of Qanun-e-Shahadat being parimteria to Section-65 of Evidence Act. Reliance is placed on the cases of Mokim Mondal<sup>2</sup>; Mst. Mehrai<sup>3</sup>; Syed Qamar Ahmed<sup>4</sup>; Province of the Punjab<sup>5</sup>; Waheed Akhtar<sup>6</sup> and MA MI<sup>7</sup>.

---

<sup>2</sup> PLD 1967 Dacca 591 [Mokim Mondal and another v. Ali Miah Pradhan and others].

<sup>3</sup> PLD 1978 Lahore 771 [Mst. Mehrai v. Mst. Noor Bhari and another].

<sup>4</sup> 1994 SCMR 65 [Syed Qamar Ahmad and another v. Anjum Zafar and others].

<sup>5</sup> 2003 CLC 504 [Province of the Punjab through Secretary Irrigation and Power Department P.W.D. Secretariat Old Anarkali, Lahore and 3 others v. Ch. Mehraj Din & Co. through proprietor.

<sup>6</sup> 2004 SCJ 196 [Waheed Akhtar v. Aftab and others].

<sup>7</sup> NLR 1991 SD 410 [MA MI and another v. Kallander Ammal].

10. Page-6 of the judgment in terms of its second para clarifies that the appellant/defendant failed to bring forward any evidence in the matter despite repeated opportunities. The only application that was pending at the time of final arguments was CMA No.11127/2013 [U/S 151 read with Order-IX Rule-9 CPC] and that is for setting aside the order for closing the side of the appellant. The said application was dismissed in terms of para-6 impugned judgment. This application is meant for reopening of the side only and not for bringing the “copies” of original documents which is denied by court order independently on 03.09.2013 and to such extent it attained finality (as far as copies of documents are concerned), whereas, on 17.11.2016 when judgment was passed, CMA No.11127/2013 was also dismissed. There were enough opportunities provided to defendant/ appellant and more importantly since original documents were not available for their production and no efforts taken to prove the lost documents to jump to lead secondary evidence and no steps to fulfill the requirement of Section-75 and 76 of Qanun-e-Shahadat parimateria to Section-64/65 of Evidence Act, were taken, hence futile exercise was avoided by the single Judge hearing suit.

11. Last argument of counsel to refer the document to an expert is also numbed as there is no need for referring the matter to the handwriting expert as the original letter dated 9<sup>th</sup> June, 1991 was never produced; in fact it was not available with the appellant.

12. The appellant perhaps on their own obtained expert opinion on the basis of the photocopies which could not be considered at all on several counts. Firstly, it was done at their own and whatever material provided to the alleged expert is not known either to the respondent or to the Court. Secondly, undisputedly



the report was based on the photocopy of a material document which is seriously disputed and was never produced throughout the proceedings and any forensic report of an expert based on photocopy, that too obtained unilaterally, cannot be relied upon and would be gross miscarriage of justice, if that is considered. Who acknowledged those bearer certificates is also a mystery and where and how such certificates were encashed (although were bearer) is also an untraced history and the appellant negligently avoided to lead evidence.

13. The answers to the two primary issues that is issue No.2 and issue No.4, as framed on 18.08.1996, gives the conclusiveness to the fate of the suit and that is neither contents of letter dated 9<sup>th</sup> June, 1991 were “proved” by the appellant nor could the said disputed letter be deemed to have authorized the appellant bank to issue a Dollar Bearer Certificate of US\$-40,000/- and consequently plaintiff is entitled for a decree as passed. The decree was passed as to the current rate of US Dollars, which has eliminated the issue of depreciation of Pak currency. No interference is required and the impugned judgment and decree is maintained.

14. In view of the above, the instant appeal was dismissed by a short order dated 05.12.2023 and above are the reasons for the same.

Dated:-12.12.2023

JUDGE

JUDGE

Ayaz Gul