

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

I.A. No. 26 of 2011

DATE	ORDER WITH SIGNATURE OF JUDGE
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16.08.2023

For hearing of CMA 773/23

Petitioner present in person

It appears that this 1st Appeal was filed against the Judgment and Decree passed in Suit No. 51 of 2004 in Banking Court-II, Hyderabad. It was for rendition of account filed by the appellant / borrower. On consideration of the pleadings and evidence, the suit was dismissed and consequently this appeal was filed which is pending since 2011 and the appellant during its pendency remained unconcern with regard to its expeditious disposal. On number of dates since 2011 until its dismissal on 23.02.2023 he remained absent without any justifiable cause. Despite this an application for its restoration was filed though it was not maintainable as it was not a dismissal for non-prosecution, however, we have sympathetically considered the application and heard him on merits. We have inquired as to what is wrong in the Judgment and which evidence was not seen or ignored by the Banking Court, he was unable to answer; not a single ground in this regard was raised; some lame excuses were given that he never ran away from repayment of the loan or that it is incorrect that he remained untraceable. The following issues were framed by the trial court which were answered accordingly.

1. Whether the plaintiff has declared his business name to be "Jabbar Food Grain Merchant" vide his application dated: 02-10-1998 subsequently change the name of his business Food Grain whole sale vide application dated: 13-01-1999 which was approved by the defendants Bank vide letter dated: 01-02-1999 as "Grain Merchant whole sale"?
2. Whether the defendants No.02 visited the plaintiff's shop and demanded commission from plaintiff of three installments of finance and upon refusal he was threatened by defendants of dire consequences, arrest and detention?
3. Whether the letter dated: 14-07-1999 served upon plaintiff by defendant No.02 stated therein that at the time of visit of defendant No.02 he found stock of Rs.50,000/- only and plaintiff had failed to

utilize finance amount properly and asked the plaintiff to rectify the irregularities?

4. Whether the notice dated: 28-08-1999 served upon the plaintiff is malafide, illegal, demand is exaggerated and again the relief package announced by the Government of Pakistan and State Bank of Pakistan?
5. Whether the plaintiff has violated the terms/conditions of finance?
6. Whether the application of plaintiff for settlement to State Bank SBP committee as per relief package was considered in their 27th meeting held on 08-10-2003 and after considered the same and was dismissed?
7. Whether the staff of defendants approached to plaintiff for recovery of outstanding amount which was lawful and procedural and under the law, the plaintiff was to be arrested under Land Revenue Act?
8. Whether the plaintiff was harassed and black mailed or any mental torture or loss to his business caused by any action of defendants?
9. Whether the plaintiff has cause of action against the defendants to file the present suit?
10. Whether the suit is barred under the provision of law?
11. Whether the suit is maintainable?
12. What should the decree be?

It is stated by him that bank is yet to recover the amount of loan of Rs. 2,00,000/-. The loan was sanctioned and disbursed on 22.10.1998 by Small Business Finance Corporation available as annexure 'E' page 45 with 15% markup / interest. The sanctioned loan was cancelled on 25.8.1999 in about 10 months time on account of the violation of the terms and conditions of the finance agreement. The suit did not challenge the cancellation of the loan agreement in terms of notice for its repayment dated 25.8.1999 within a year which is a material term in the agreement. Since appellant has not challenged the purported cancellation of the loan within a year's time, this ground alone could hardly be a justification to intervene that the loan agreement was cancelled within one year. There is no justification to intervene in the findings of the trial court / Banking Court. It is stated that the Bank is yet to recover the disbursed amount under the agreement and no civil proceedings were initiated. The sympathetic view is extended to the appellant by restoring to this 1st Appeal after the

grant of restoration application; however, the merit of appeal requires no indulgence and interference in view of the above facts and circumstances and the appeal as such is dismissed on merit too.

JUDGE

JUDGE

karar_hussain/PS*