

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Justice Ms. Sana Akram Minhas

High Court Appeal No. 47 of 2023

The Standard Chartered Bank Pakistan Ltd.
Versus
Nasim Ahmed & others

Date of Hearing: 30.04.2024
Appellant: Through Ms. Rifat Sultana Mughal Advocate.
Respondent No.1: Through M/s. Yawar Farooqui and Asad Ali Riar Advocates.
Respondents No.2 to 5: Not represented

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This appeal is arising out of a judgment passed in Suit No.1156 of 1999 for damages which judgment decreed the suit of respondent No.1 jointly and severally in the sum of **Rs.250 Million** with markup of 6% from the date of the suit till its realization against five defendants out of whom only one defendant “bank” has preferred this appeal.

2. Brief facts are that on account of some misappropriation and embezzlement a complaint was lodged by respondent No.5 when he was an employee of bank with the FIA, which is claimed to be a false and malicious by the respondents/ plaintiff. The complaint before the FIA was filed on 22.07.1998. The complaint did not involve respondent No.1/plaintiff directly in respect of a fraud committed by respondent No.4 to the tune of Rs.6.5 Million being an embezzled amount. Respondent No.1 (plaintiff in suit) claimed that he was maliciously implicated in the fraud by bank as apparently respondent No.4 repaid the entire amount. In addition to such accusation in paragraph 8 of

plaint, respondent No.1 being plaintiff, further stated that respondent No.2 Saleem Jan purposely in presence of respondents No.3 Sirajuddin Aziz and one Khalid Iftikhar attempted to defame him (plaintiff) and his reputation, while he was present before them.

3. It is claimed that the complaint with the FIA was never pursued by the respondents No.2, 3 and 5 and the main accused respondent No.4 was not charged in the Court of law by the Bank and its officials. It is claimed that despite such recovery from her/respondent No.4, the complaint against the plaintiff/respondent No.1 was not withdrawn; neither any apology was tendered. It is claimed that he has been subjected to hatred and was/is being ridiculed amongst the right thinking members of the Society hence the suit was filed for the recovery of damages on several counts such as defamation, mental anxiety, distress and trauma caused to him through these mala fide actions, as alleged.

4. The suit was defended by the respondent Bank i.e. the appellant and respondents No.2, 3 and 5 who filed their written statement whereas respondent No.4 filed her written statement separately. They denied all accusations. On 27.11.2000 following issues were framed:

1. Whether the complaint filed by the defendant No.5 before the Federal Investigation Agency directly implicated the plaintiff in the fraud committed by the defendant No.4?
2. Whether any action in Court has been initiated on the complaint filed against defendant no.4, or has it been pursued by defendants No.1, 2, 3 and 5?
3. Whether the acts and omissions of the defendants have defamed the plaintiff and the allegations made against the plaintiff have caused the plaintiff serious injury?
4. Whether the plaintiff is entitled to damages for defamation, mental anxiety, distress and trauma, loss of status and reputation as a banker?

5. Whether the plaintiff was forced to resign from the service of the defendant No.1?
6. What should the decree be?

5. In an attempt to prove respective pleadings the evidence was recorded. Naseem Ahmed, the plaintiff, filed his affidavit-in-evidence and was subjected to cross-examination whereas Ghulam Shabbir on behalf of Standard Chartered Bank, the appellant, also filed affidavit-in-evidence and was subjected to cross examined. Respondent No.4 also filed her affidavit-in-evidence and she was also subjected to cross-examination. Finally the suit was decreed, as above, hence this appeal.

6. We have heard learned counsel for appellant as well as respondent No.1 and perused material available on record. No one appeared on behalf of remaining respondents.

7. Issues No.1 and 2 were decided by learned Single Judge together. The FIA took cognizance on account of a complaint of Tariq Ahmed, respondent No.5, which is available as Ex.DW1/3, which is a letter attached with the complaint narrating the entire facts. All that was asked by the Chief Manager Tariq Ahmed, respondent No.5, was to make a probe and investigation as to the subject misappropriation or fraud highlighted in the complaint. Respondent No.4 apparently in pursuance of the complaint then deposited tentative amount of Rs.2 lacs and apparently the balance amount was also deposited subsequently. This was communicated to the FIA by the Union Bank, the predecessor of the appellant, as it then was on 05.08.1998. About 1½ month later respondent No.1 i.e. plaintiff in the suit on 17.09.1998 tendered his resignation in the following terms:

“Resignation

It is regretted to inform you that I am not able to continue my services in your esteemed organization. You are kindly requested to accept my resignation with immediate effect.

I am grateful to you and all other colleagues for all their patronage and assistance that were provided to me during my stay in Union Bank Ltd.

Thanks and regards.

Sd/-

NASIM AHMED

Recommended for acceptance on following terms:

- *Notice period to be waived.*
- *3 months' salary to be paid.*
- *Leave to be encashed.*
- *Six months grace period to be allowed for HBF adjustments.*

Sd/-

18/9"

8. The following day i.e. 18.09.1998 letter of acceptance was communicated to the plaintiff/respondent No.1. He received all outstandings in terms of final settlement dated 29.09.1998 available at page 131 of the file. Later in time, on 09.08.1999 the subject suit for damages and defamation was filed after conclusion of the inquiries by the FIA by virtue of letter of 05.08.1998. The suit is filed after a year i.e. on 09.08.1999, which was contested and above issues were framed. No one raised the question of limitation before us.

9. It is to be seen whether the appellant or any of its officers on Bank's behalf have implicated the respondent No.1/plaintiff purposely with a motive to defame and malign him. The primary document which is to be perused is the complaint of Tariq Ahmed dated 22.07.1998 on behalf of bank. This complaint does not implicate respondent No.1/plaintiff directly or indirectly. In the statement that she (respondent No.4 Saeeda Aamir) filed in Court i.e. affidavit-in-evidence she accused respondent No.1/plaintiff that she acted under the instructions and directions of the plaintiff. The cross-examination of Saeeda Aamir did not disclose the involvement of appellant bank or any of its officers in accusing respondent No.1 i.e. plaintiff. In fact it was Saeeda Aamir who

not only in her affidavit-in-evidence but also in cross-examination provided the details of the accusation. She stated to have acted under instructions of plaintiff/respondent No.1 but gave no corroborative support except her solitary statement. Could she be compelled to follow instructions of respondent No.1/plaintiff even if not found lawful? Indeed, she has no answer; she could have refused all such instructions which she thought were not lawful.

10. The two issues that are under consideration are very crucial and those are (i) whether the complaint filed by defendant No.5/respondent No.5 (on behalf of bank) before the FIA directly implicated the plaintiff/respondent No.1 in fraud committed by defendant No.4? (ii) secondly whether any action in Court has been initiated on the complaint filed against defendant No.4 or has it been pursued by the appellant and respondents No.2, 3 and 5? We do not see any direct accusation against respondent No.1/plaintiff in lodging such complaint. The complaint was lodged as bank was under the obligation to undertake such probe, which was taken to its logical end.

11. The complaint disclosed that an inquiry routed from Mr. Shahid Bhatti of Lahore Branch of Union Bank about the debit entry of Rs.65,00,000/- and the plaintiff being Chief Manager was informed. Mr. Zahid Haider from Accounts Department was asked to take out vouchers of the relevant date when debit entry was made. As story developed, subject to such complaint, respondent No.4 accused respondent No.1 that she acted under his (respondent No.1's) instructions.

12. In the affidavit-in-evidence in paragraph 9 respondent No.1 got aggrieved of his transfer from post of Chief Manager Clifton Branch on 10.07.1998. This only happened two days after the inquiry call from Lahore by Shahid Bhatti on 08.07.1998. It is claimed by respondent No.1 to be unceremonious transfer but has not been explained if this requires

any ceremony and this has caused defamation. This transfer is also not explained to be unlawful. He then reported to Regional Office on 11.07.1998. It is also pertinent to note that in cross respondent No.1 admitted that transfer and posting was a routine process.

13. Paragraph 10 of affidavit-in-evidence of plaintiff/respondent No.1 disclosed that Saleem Jan/respondent No.2 accused him in presence of Sirajuddin/respondent No.3 and Khalid Iftikhar of being accomplice in the fraud. None of these individuals were summoned to corroborate such allegations as it was his (plaintiff's) burden to be discharged. Respondent No.1's plea is that the case against respondent No.4 Saeeda was not taken to its logical end. To our understanding it was not taken to be proceeded further in the best interest of bank and the bank has not accused anyone directly; all they required was a lawful probe. Respondent No.1 cannot compel bank to continue with the complaint in the Court of law. He claimed in paragraph 12 that because of that unpursued complaint he still faces all disadvantages, difficulties of a person accused of a criminal offence.

14. If the respondent No.1 feels that way it is his own mindset, whereas firstly, no one was directly nominated in the complaint and secondly, the complaint was not processed against anyone including respondent No.1 which shows that he is out of any charges which he himself took upon him.

15. Paragraph 13 shows that he was compelled to resign whereas resignation itself sounds otherwise. It is not claimed by respondent No.1 that the resignation tendered by him and produced by bank in evidence is not the same; his case is that the original of it was not produced; this alone will gain nothing as nothing is attributed against such alleged concealment, as far as original is concerned. After paragraph 11 of plaintiff which discussed resignation, it is nowhere stated that clearance

certificate was not issued; it is also not stated which employer has asked for such certificate.

16. On bank's behalf one Ghulam Shabbir was examined and he denied all allegations. Paragraph 5 of affidavit-in-evidence also denied any attempt to implicate respondent No.1/plaintiff. It is the statement of Saeeda Aamir/respondent No.4 who implicated respondent No.1 directly. The witness has admitted that respondent No.1 is not involved in the fraud and it was respondent No.4 who was involved.

17. Perusal of pleadings and evidence shows that there was no malicious intent as far as bank is concerned and claim of damages on that count is not sustainable. At this stage it may also be pertinent to note that the main Issues No.1 and 2 are answered in negative in favour of appellant and against respondent No.1 and hence the inference drawn would be that the complaint, which is the basis for the alleged defamation, mental anxiety, distress and trauma, loss of status and reputation, has neither implicated respondent No.1/plaintiff nor pursued by the defendants. In such a situation how damages could be granted is unconceivable. Had these issues answered in affirmative, those responsible could have been penalized, as all the actions from transfer to resignation were not shown to be contrary to law or having nexus with complaint, but by answering the issues in respect of complaint in negative the answering defendant has been absolved of subsequent events and liabilities.

18. As regard the damages as has been discussed and/or awarded in paragraph 16 onwards of the judgment in pursuance of Issues No.3, 4 and 5 need no further deliberation in view of the fact that the plaintiff/respondent No.1 has not been able to make out a case for defamation, mental anxiety, distress and trauma caused to him through these mala fide actions of the appellant.

19. Upshot of the above discussion is that the respondent No.1/ plaintiff has failed to make out a case for damages against the appellant and consequently the appeal is allowed, impugned judgment is set aside and the suit of the plaintiff/respondent No.1 stands dismissed.

Dated:

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