

IN THE HIGH COURT OF SINDH AT KARACHI

**Banking Suit No.B-28 of 2023**

( *First Women Bank Limited v. Hascol Petroleum Ltd* )

<b>Plaintiff (Bank):</b>	First Women Bank Ltd Through Mr. Gohar Mahmood, Advocate along with Ms. Sobia Mehak, Law Officer, FWBL
<b>Defendant (Customer):</b>	Hascol Petroleum Ltd Through Ms. Maria Ahmed, Advocate
<b>Date(s) of Hearing:</b>	18-12-2023, 20-12-2023, 7-3-2024 & 10-8-2024
<b>Date of Decision:</b>	15-8-2024

**ORDER**

1. **Sana Akram Minhas, J:** The instant Banking Suit No.B-28/2023 (“**Suit B-28**”) has been instituted by the Plaintiff (“**Plaintiff Bank**”) against its Customer i.e. Defendant (“**Defendant**”) for recovery of Rs.853,540,095.02 along with associated costs etc under section 9 of the *Financial Institutions (Recovery of Finances) Ordinance, 2001* (“**FIO**”). This order addresses CMA No.11593/2023, which is an application under section 5 of the *Limitation Act, 1908* (“**Delay Condonation Application**”) read with section 151 of the *Code of Civil Procedure, 1908*, (“**CPC**”) submitted by Defendant, seeking condonation of any delay in filing the application for Leave to Defend (“**LD Application**”) under section 10 of the FIO (being CMA No.11594/2023).

**Defendant’s (Hascol) Arguments**

2. Learned Counsel for Defendant avers that under section 9(5)<sup>1</sup> of FIO, the Plaintiff Bank is required to serve notice on the Defendant through four

---

<sup>1</sup> Section 9. Procedure of Banking Courts:

(5) On a plaint being presented to the Banking Court, a summons in Form No.4 in Appendix 'B' to the Code of Civil Procedure, 1908 (Act V of 1908) or in such other form as may, from time to time, be prescribed by rules, shall be served on the defendant through the bailiff or process server of the Banking Court, by registered post acknowledgement due, by courier and by publication in one English language and one Urdu language daily newspaper, and service duly effected in any one of the aforesaid modes shall be deemed to be valid service for purposes of this Ordinance. In the case of service of the summons through the bailiff or

modes simultaneously viz. Court Bailiff, registered post acknowledgment due (AD), courier and newspaper publication. Additionally Order 29 rule 2 CPC mandates that notice is to be served at the Defendant's registered office.

3. The Defendant's Counsel maintains that:
- i) The notices published in English and Urdu newspapers on 12.7.2023 (viz. *THE NEWS* and *JANG*) did not come to the attention of any of its officers.
  - ii) Meanwhile, the notices dispatched by Pakistan Post via registered post and Leopards Courier on 13.7.2023 were addressed to Defendant's incorrect, former address (located at The Forum, 1<sup>st</sup> Floor, Suite Nos.105-106, G-20, Khy-e-Jami, Block 9, Clifton, Karachi) and consequently could not be delivered, as evidenced by the two tracking/delivery reports attached with the Delay Condonation Application. The first report stated that "*Addressee not found*" while the second indicated "*Consignee Shifted*". Notably, it was the Defendant who obtained both the tracking/delivery reports from the relevant websites and produced them, since there is no slip/card of acknowledgment due (AD) with the registered post receipt or courier delivery report (issued by the courier company) available on the record.
  - iii) The Defendant is a publicly listed company incorporated under the laws of Pakistan whose shares are quoted and traded on the Pakistan Stock Exchange ("**PSX**"). The Defendant's change in registered address (to Office No.29, 29<sup>th</sup> Floor, Sky Towers West Wing (A), Dolmen City, Abdul Sattar Edhi Avenue, Block 4, Clifton, Karachi) was notified as early as in April 2021, on the PSX, the Defendant's own website, and through requisite forms duly filed on behalf of Defendant before the Securities and Exchange Commission of Pakistan (SECP) in accordance with applicable law. The notifications published on the PSX amounted to public dissemination of information, analogous to a widely disclosed public notice. Consequently, as a prudent bank, Plaintiff should be considered informed of the change or should be deemed to have knowledge of the new registered address.

---

process-server, a copy of the plaint shall be attached therewith and in all other cases the defendant shall be entitled to obtain a copy of the plaint from the office of the Banking Court without making a written application but against due acknowledgement. The Banking Court shall ensure that the publication of summons takes place in newspapers with a wide circulation within its territorial limits.

- iv) Despite this failure, the Defendant eventually received notice via the Court Bailiff on 24.7.2023, who delivered it to the correct registered address. Subsequently, the *Vakalatnama* was filed on behalf of the Defendant on 11.8.2023 and the LD Application on 15.8.2023, demonstrating it promptly engaged legal counsel and actively participated in the proceedings.
  - v) Service cannot be held good on the basis of publication alone if it is not affected validly through any other modes specified in section 9(5) of FIO, which has not been done in the instant case. Therefore, compliance with section 9(5) of FIO did not occur, and no proper and valid service was affected upon Defendant, with only the newspaper publications on 12.7.2023 (which, as stated above, the Defendant's officers were not aware of) and the personal service by the Bailiff on 24.7.2023 (which the Defendant received) being executed. The Defendant, thus, did not become aware of the proceedings until 24.7.2023. The delay, if any, may thus be condoned and the LD Application heard and decided on merits.
4. In the above context, the Defendant's Counsel presents three-fold submissions supported with case law<sup>2</sup> to reinforce her arguments:
- i) The service via registered post and courier was directed to the old, incorrect registered address (at *The Forum*) instead of the new, current registered office (at *Dolmen City*). This constitutes invalid service. As a result, the limitation period for filing the LD Application has not commenced, and the said Application is filed within the prescribed time.
  - ii) Alternatively, the 30-day period for filing the LD Application should start from the date of actual notice (i.e. 24.7.2023). Calculated accordingly, the Application (filed on 15.8.2023) falls well within the prescribed time.
  - iii) However, if the 30-day period for filing the LD Application is calculated from the date of publication (i.e. 12.7.2023), then the Application (filed on 15.8.2023, Tuesday) is late by only two (2) days. This delay occurred because 12<sup>th</sup> and 13<sup>th</sup> August 2023 fell on a

---

<sup>2</sup> Defendant's Citations: 2019 CLD 602 (*Ayub Raza v. Bank Al Falah*); unreported decision dated 21.8.2023 of Jawad Akbar Sarwana J in Banking Suit No.B-45/2022 (*The Bank of Punjab v. Hascol Petroleum Limited*); 2019 CLD 285 (*Deutsche Bank v. Fateh Textile Mills*); 2018 CLD 1016 (*J.S. Bank v. Landhi Steel Mill*); 2007 CLD 687 (*Nazir Hussain v. Bank of Punjab*); 2011 SCMR 1496 (*Mubarak Ali v. First Prudential Modaraba*); 2021 CLD 553 (*Muhammad Amin v. National Bank of Pakistan*); 2009 CLD 1699 (*Muhammad Yaqoob Akhtar v. Habib Bank Ltd*); 2009 CLD 342 (*Aamer Enterprises v. United Bank Limited*)

weekend (Saturday and Sunday respectively), and 14.8.2023 (Monday) was a public holiday (being the Independence Day). Under these circumstances, Defendant be granted an extension for the two-day delay in filing the LD Application, as allowed by the proviso of section 10(2)<sup>3</sup> of FIO, as the delay resulted from unavoidable circumstances and was not intentional.

### **Plaintiff Bank's Arguments**

5. Learned Counsel for the Plaintiff Bank has opposed the Delay Condonation Application and asserted, while referencing legal precedents<sup>4</sup>, that:
  - i) The last known address, disclosed by the Plaintiff Bank in the Plaintiff's title, matches the address mentioned in the various documents attached to the Plaintiff, which were executed between the parties in 2018.
  - ii) The self-generated Statement of Account, printed on 16.6.2023 by the Plaintiff Bank and produced with its Plaintiff, also shows the same address for the Defendant as given in the Plaintiff's title.
  - iii) The Defendant was required to inform the Plaintiff Bank of any change of address, which it failed to do. Therefore, the Defendant's claim of a change of address for the registered office is unfounded.
  - iv) The publication of summons was made in two newspapers as required by law, thereby fulfilling the requirement of section 9(5) of FIO.

### **Common Ground Between Parties**

6. I have considered the submissions of both Counsel and reviewed the record.
7. The parties are in accord that (i) the address for service mentioned in the Plaintiff's title is not the current registered address of the Defendant; (ii) there is no intimation or acknowledgment of service by post and courier on record,

---

<sup>3</sup> Section 10. Leave to defend:

(2) The defendant shall file the application for leave to defend within thirty days of the date of first service by any one of the modes laid down in sub-section (5) of section 9:

Provided that where service has been validly effected only through publication in the newspapers, the Banking Court may extend the time for filing an application for leave to defend if satisfied that the defendant did not have knowledge thereof.

<sup>4</sup> Plaintiff's Citations: 2023 CLD 1339 (Pesh) (*Zarai Taraqiyati Bank v. Muzaffar Khan*); 2011 SCMR 1469 (*Axle Products v. Allied Bank*); 1987 CLC 2043 (Lah) (*Muslim Commercial Bank v. Aslam Khan*)

and the tracking/delivery reports retrieved by the Defendant from relevant websites confirm non-delivery due to the Defendant's relocation; (iii) neither the registered post, the courier, nor the physical summons through the Bailiff were ever sent to the Defendant's current registered address; (iv) the Bailiff effected service at the Defendant's current registered address on his own initiative, even though the address on the Plaint did not match the address where the summons were served; (v) the service effected by the Bailiff on the Defendant was served on 24.7.2023.

8. Given these facts, this Court will now address the issue of service.

### **Opinion Of Court**

#### Omission to Notify Address Change

9. In Mubarak Ali v. First Prudential Modaraba<sup>5</sup>, despite the failure to notify the bank of his address change, the Supreme Court did not deem this omission as a wrongful act on the petitioner's part. The Court held that the petitioner's failure did not absolve the bank of its duty to ensure proper service of summons. Emphasizing the importance of proper service, the Court noted that the bank's reliance on outdated address records, despite the petitioner's relocation, was insufficient. Consequently, the Supreme Court ruled that the petitioner had not been duly served, overturned the ex parte judgment and decree and remanded the case for fresh proceedings.
10. The decision in Deutsche Bank AG v. Fateh Textile Mills Ltd<sup>6</sup> affirms that for a valid service of summons under section 9(5) of FIO, all four prescribed modes of service must be adopted simultaneously with strict compliance necessary. Service through any one of these modes shall be deemed valid, provided that none of them is found to be defective or incomplete. Failure to adhere to any of these modes renders the service defective. The ruling emphasizes that, before proceeding with a banking suit, there must be credible evidence before the banking court confirming that the summons have been properly served on the defendant. The *Deutsche Bank* ruling cites an earlier decision of a Division Bench in Asif Kudia v. KASB Bank Limited<sup>7</sup>

---

<sup>5</sup> 2011 SCMR 1496 (*Mubarak Ali v. First Prudential Modaraba*) – In this case, the petitioner contended that he was not properly served with summons, as he had moved to a different address not reflected in the bank's records, and the notices published did not reach him at his new location.

<sup>6</sup> 2019 CLC 285 (*Deutsche Bank AG v. Fateh Textile Mills Ltd*) – In this case, although the summons were published in newspapers, they were not issued by registered post with acknowledgment due, and no delivery reports from the courier company were available. This lack of documentation led to the conclusion that the summons were not properly served according to statutory requirements.

<sup>7</sup> 2014 CLD 1548 = 2015 CLC 1734 (*Asif Kudia v. KASB Bank Limited*)

to reinforce that sending summons via ordinary registered post, instead of registered post with acknowledgment due, does not fulfil the mandatory requirements of section 9(5), thereby invalidating the service.

11. Section 9(5) of FIO stipulates and section 10(2) reinforces that service of summons through any one of the prescribed modes shall be considered valid service under the FIO<sup>8</sup>. However, for this provision to be applicable, strict compliance with section 9(5) is necessary and the summons must be issued in Form-IV, Appendix B of CPC and served using all legally prescribed modes concurrently<sup>9</sup>. This provision does not apply if all prescribed modes are not adopted simultaneously or if any of the modes are found to be defective or incomplete.
12. Proper service ensures that the legal process is fair by providing the party being served with proper notice and adequate opportunity to respond. It generally includes the following elements: (i) correct address, (ii) legally accepted method of service (such as bailiff, registered post, courier, publication etc), (iii) proof of service, and (iv) timeliness (i.e. notices/documents be served within a specified time frame stipulated by law).
13. In the instant Suit B-28, both registered post and courier dispatch receipts are on record, while the tracking/delivery reports (which have been subsequently furnished by the Defendant along with its Delay Condonation Application) state that the Defendant had relocated and could not be served. The Plaintiff Bank's actions (rather inaction) also confirm non-delivery. Had the Defendant been served, the Plaintiff Bank would have swiftly produced the delivery reports itself instead of waiting for the Defendant to do so. Furthermore, an examination of the file of Suit B-28 reveals that the Additional Registrar (O.S.) simply noted in his diary entry dated 11.8.2023 that the Plaintiff Bank submitted receipts for courier and registered post AD, along with publications in two newspapers. He neither mentions the filing of delivery reports for registered post (specifically the acknowledgment due (AD) slip/card) and courier, nor states that service was effected through mail and courier. Additionally, there is also no mention by him of service through the Bailiff, which, if considered, would have revealed that the Bailiff served the documents at a registered address different from the one stated in the Plaintiff's title (as averred by the Defendant in paragraph 8 of its Delay Condonation Application which has not been specifically denied).

---

<sup>8</sup> 2015 CLD 759 (*Allied Bank v. Sultan Ali*); 2004 CLD 1555 (*Muhammad Bilal v. Union Bank*)

<sup>9</sup> 2019 CLC 285 (*Deutsche Bank AG v. Fateh Textile Mills Ltd*); 2018 CLD 1016 (*J.S. Bank v. Landhi Steel Mill*); 2014 CLD 1548 = 2015 CLC 1734 (*Asif Kudia v. KASB Bank Limited*)

14. Merely annexing dispatch and delivery reports is not sufficient; it is essential to verify both the correctness of the provided addresses and whether the Defendant received them. Failing to do so would reduce this exercise of attaching dispatch and delivery reports to a mechanical formality devoid of substance. This raises the natural next question: what is the correct address of the Defendant where service should have been effected?

#### Service On Registered Office

15. The Defendant, being a public limited company, is considered a "corporation" under Order 29 CPC<sup>10</sup>, necessitating service at its registered address for validity and effectiveness<sup>11</sup>. This requirement of the CPC extends to banking suits as per section 7(2)<sup>12</sup> of FIO.
16. There is more. Section 21 of the *Companies Act, 2017*<sup>13</sup> mandates that all communications and notices intended for a company must be addressed to its registered office. This requirement corresponds to section 142 of the *Companies Ordinance, 1984*, which was repealed upon the enactment of the Companies Act. There are no contrary provisions in the FIO regarding these requirements.

#### Discretion To Waive Delay

17. In *Aamer Enterprises v. United Bank Limited*<sup>14</sup> a Division Bench of this Court held that under the proviso to section 10(2) of FIO, the court possessed significant discretion to waive any delay in the filing of a leave to defend application, provided that the defendant could demonstrate to the court that it had not been aware of the summons published in newspapers.

---

<sup>10</sup> Order 29 (2) CPC: Service on corporation: Subject to any statutory provision regulating service of process, where the suit is against a corporation the summons may be served:

- (a) on the secretary or on any director, or other principal officer of the corporation, or
- (b) by leaving it or sending it by post addressed to the corporation at the registered office or if there is no registered office then at the place where the corporation carries on business.

<sup>11</sup> NLR 1994 SCJ 499 (*Safiullah Siddiqui v. Karachi Electric Supply Corporation Ltd*)

<sup>12</sup> Section 7. Powers of Banking Courts:

- (2) A Banking Court shall, in all matters with respect to which the procedure has not been provided for in this Ordinance, follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908), and the Code of Criminal Procedure, 1898 (Act V of 1898).

<sup>13</sup> Section 21 of Companies Act 2017: Registered Office of Company:

- (1) A company shall have a registered office to which all communications and notices shall be addressed and within a period of thirty days of its incorporation, notify to the registrar in the specified manner.
- (2) Notice of any change in situation of the registered office shall be given to the registrar in a specified form within a period of fifteen days after the date of change: ... ..

<sup>14</sup> 2009 CLD 342 (*Aamer Enterprises v. United Bank Limited*)

18. In *The Bank of Punjab v. Hascol Petroleum Limited* (a recent unreported decision dated 21.8.2023 of a Single Judge of this Court passed in Banking Suit No.B-45/2022), which involves the same Defendant and remarkably mirrors the facts and circumstances of the present case, the Single Judge reached a similar conclusion holding that:

*19. It is apparent from a plain reading of the proviso of Section 10(2) of FIO, 2001, that where service is affected only through publication on such party in the newspaper, the Banking Court has power in terms of proviso to Section 10(2) of FIO, 2001, to extend the time for filing an application for leave to defend the suit upon being satisfied that the defendant requesting for condonation of delay in filing leave to defend application, did not have any knowledge about the pendency of proceedings against him before the Banking Court. While this Court recognizes the well-established jurisprudence that service of summons through any one of the modes is deemed to be valid service for the purpose of Sections 9(5) and 10(2) of FIO, 2001, yet in order for this principle to become applicable the summons must have been issued in Form-IV Appendix B of the CPC through all such modes as are prescribed in law. Admittedly in this matter, summons were issued through registered post and courier service but not in alignment with Order 29 CPC, which required that the summons be addressed to the Defendant's registered company address. Thus the form and content of the summons were not in sync with Order 29 CPC, and hence defective. There is an argument to be made that publication which mention an incorrect address of the Defendant may not also constitute good and proper service. The closest authority in support of this proposition may be found in the case of *Khyber Textile Mills Ltd. and Others v. Investment Corporation of Pakistan and others*, 2010 CLD 1529, however, the point made is not so evident and more so deductive from the observations of the learned single Judge who was later elevated to the status of a Judge of the Supreme Court of Pakistan. In these circumstances, I am of the opinion that it would be very harsh to penalize the Defendant in relation to the publication of defective summons when it is an admitted position that the summons served by registered post acknowledgement due and courier were defective plus no evidence of their acknowledgment and delivery report is available on record. I am also fortified by the learned Division Bench cases reported in *Hassan Ara v. Bank of Punjab*, 2006 CLD 1502, and *Nazir Hussain v. Bank of Punjab*, 2007 CLC 687, and relied upon by the learned Single Judge in the *J.S. Bank* case (*supra*) in support of the proposition that if the summons have not been issued properly, the Defendant has fully justified its case for condonation.*

19. In the present Delay Condonation Application under consideration, the Defendant has unequivocally stated (in paragraphs 8 and 10), through an affidavit of its Manager of Legal Compliance, that it had no prior knowledge of the summons published in the two newspapers on 12.7.2023 and that the Defendant became aware of the summons only upon service by the Bailiff on 24.7.2023. Additionally, the newspaper notices did not come to the attention of any officer of the Defendant, nor does the Defendant's office maintain daily subscriptions to either newspaper. The Plaintiff Bank, in its Rejoinder, does not specifically deny these assertions. Thus, there is no substantial material before this Court to issue a ruling to the contrary.



20. Applying the principles established in the legal precedents discussed above (in particular the *Deutsche Bank* case and the Supreme Court's decision in the *Mubarak Ali*), it is evident that in the present case, the Defendant has no contractual obligation to inform the Plaintiff Bank of changes in its registered address (as no such provision has been pointed out by the Plaintiff Bank's Counsel in the instant Suit B-28). Despite the ordinary prudence that might require the Defendant to notify changes in its registered address, the Plaintiff Bank remains bound by its statutory duty under the CPC and the *Companies Act, 2017* to accurately state the Defendant's current registered address in the title of the Plaint. The Defendant's failure to exercise prudence does not excuse the Plaintiff Bank from this statutory duty. The Plaintiff Bank cannot plead ignorance as a defence to avoid compliance with the statutory provisions. The Plaintiff Bank was expected to exercise due diligence throughout, rather than solely relying on the registered address of the Defendant as per its available records when drafting the Plaint title. Therefore, serving the Defendant at an address other than the Company's current registered address, by dispatching letters to an outdated registered address (which admittedly remained undelivered) that is no longer valid, cannot be considered proper service under section 9(5) of FIO.
21. Echoing the observations of *Mubarak Ali* judgment, if the Plaintiff Bank's claim is genuine and supported by valid documents, it would still be entitled to a decree even if the Defendant is granted the opportunity to apply for Leave to Defend the Suit B-28 and continue with further proceedings.

### **Conclusion**

22. Taking into account the peculiar circumstances of the case, I hold as follows:
- i) Since the service via registered post and courier was directed to the old, incorrect registered address instead of the current registered office, it constitutes invalid service. Consequently, the limitation period for filing the LD Application has not commenced, and the said Application has been filed within the prescribed timeframe.
  - ii) If the 30-day period for filing the LD Application is calculated from the date of receiving notice through the Court Bailiff on 24.7.2023, the LD Application is still well within the prescribed timeframe.
  - iii) If the 30-day period for filing the LD Application is computed from the date of newspaper publications (i.e. 12.7.2023), the two (2) days delay in filing the LD Application (filed on 15.8.2023) is condoned in terms of the proviso of section 10(2) of FIO. Consequently, the Delay

Condonation Application (i.e. CMA No.11593/2023) filed under section 5 *Limitation Act, 1908* is treated as an application under section 10(2) of FIO and is allowed. This recharacterization is based on the principle that as long as a court has the jurisdiction to hear and decide an application or a case, citing an incorrect legal provision does not impede its ability to exercise that authority<sup>15</sup>.

- iv) The Leave to Defend Application (CMA No.11594/2023), is taken on record, which is to be heard and decided in accordance with law. The Plaintiff Bank may file its replication if it so chooses.

**JUDGE**

Karachi

Dated: 15<sup>th</sup> August, 2024

---

<sup>15</sup> 1982 SCMR 494 (*Safia Bibi v. Aisha Bibi*); PLD 1993 SC 109 (*Pakistan Fisheries Ltd v. United Bank Ltd*); 1994 SCMR 1555 (*Jane Margrete William v. Abdul Hamid Mian*); 2014 CLD 1548 = 2015 CLC 1734 (*Asif Kudia v. KASB Bank Limited*); 2019 SCMR 2018 (*Al-Khair Gadoon Ltd v. The Appellate Tribunal*)