

Judgment Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Appeal No.D-34 of 2020

Appellant : Zarai Taraqiati Bank Ltd,
Through Mr.Faheem Majeed, Advocate

Respondents No.1 to 3: Abdul Karim and 2 others
Through Mr.Muhammad Hamzo Buriro,
Advocate

Date of hearing : **15.8.2023 & 23.8.2023**

Date of Decision : 23.08.2023

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this appeal under Section 22 of Financial Institutions (Recovery of Finances) Ordinance, 2001 (**'the Ordinance'**), the Appellant has impugned exparte judgment dated 12.11.2020 and decree dated 16.11.2020, passed by Banking Court-11, Sukkur (**'the trial Court'**), in Suit No.299/2019, whereby the said Suit filed by Zarai Taraqiati Bank Ltd (**Appellant herein**) against Abdul Karim and 02 others (**respondents herein**) was dismissed being time-barred.

2. Relevant facts of the case are that the Appellant filed the above Suit against the respondents for recovery of Rs.438,052/- along with markup. It was the case of the Appellant that the respondents are his borrowers, and they had obtained loan from them amounting to Rs.272,000/- for agricultural purpose under L.C No.089344. After that, they failed to adjust the loan up to Rs.438,052/-, which was outstanding against them. When respondents failed to discharge their contractual obligation, hence appellant bank filed a Suit.

3. Despite service, respondents did not appear before the trial Court, and they proceeded ex parte vide Order dated 14.12.2019. The authorized Officer of the appellant bank, namely Sanaullah, filed his Affidavit-in-evidence in ex parte proof along with relevant documents. After hearing arguments, the trial Court dismissed the Suit on the ground that same was filed beyond the period of limitation, hence this appeal.

4. At the very outset, learned Counsel representing the Appellant contended that the impugned judgment and decree passed by the trial Court is illegal and unlawful without mentioning proper reasons for dismissing the Suit being time-barred. It is next argued that the last payment instalment was paid on 29.08.2018, and such statement of accounts specifically pleaded in the plaint and an affidavit in ex-parte proof. However, the trial Court overlooked such an aspect of the case and erroneously dismissed the Suit, and the impugned judgment is entirely illegal, unjustified and without lawful authority. It was further argued that if the judgment and decree are not set aside, the Appellant shall be deprived of their valuable rights involved in the matter. In support of his contention, he has relied upon the case of ***Messrs Shaheen Enterprises through Partners and others vs. Allied Bank Limited through Principle Office/ General Attorneys and others (2019 CLD 55)***.

5. Learned Counsel representing the Respondents, at the very outset, supported the impugned judgment and decree passed by the learned trial Court on the ground that the Suit was time-barred as it was filed beyond the period of limitation as

provided under Article 132 of the Limitation Act, 1908 (“**L.A, 1908**’) and, therefore, prayed for dismissal of the appeal.

6. We have heard the arguments advanced by learned Counsel representing the parties and minutely perused the material available on record.

7. The trial court dismissed the Appellant's Suit solely on the ground that it was filed more than 12(twelve) years after the time limit specified in Article 132 of the L. A, 1908. In the first place, it is convenient to set out the relevant statutory provisions. Article 132 of L.A, 1908, states that the period of limitation for a suit *"to enforce payment of money charged upon immovable property"* would be twelve years, and the period of limitation begins to run from the time *"when the money sued for becomes due"*. It appears that the Appellant had filed a Suit for recovery of the loan amount of Rs.438,052/- under the Ordinance, wherein it is stated that the Appellant's bank had provided financial facility to the respondents to the tune of Rs.272,000/- on 18.3.1999. It is a matter of record that respondents only paid one instalment of Rs.66,640/- on 02.8.2006, and after that, they fizzled to pay the remaining instalments. No specific dates were mentioned in the plaint regarding accrual of cause of action, and simply in Para No.7 of the plaint, it is stated that the plaintiff has approached the defendants time and again for repayment/adjustment of the outstanding amount. However, they kept them on false promises and finally refused. However, no date, time or place was mentioned by the

Appellant on which they approached the respondents. In Para No.10, it is simply stated that the cause of action accrued to the appellant bank against the respondents as stated in Para No.1 to 9, and it continued till the filing of the Suit. The trial Court has rendered a decision to dismiss the Appellant's Suit being time-barred based on the following observations: -

"Perusal of the statement of account submitted by the learned Counsel for the plaintiff bank with its plaint shows that the loan/finance was extended on 18.3.1999 and thereafter the limitation period starts for repayment of the loan. Perusal of statement of account further shows that the defendant repaid an amount of Rs.66,640/- on 02.8.2006, but thereafter he has not repaid any amount upto twelve years, so the limitation period for filing of the Suit for recovery was upto 02.8.2018, but the Suit was filed on 24.8.2019 i.e after expiry of limitation period."

8. So far, the contention of learned Counsel regarding the last payment of instalment deposited by the Respondent on 29.08.2018; therefore, the Suit was filed within the period of limitation is concerned, it may be right that in a Banking Suit, the period of limitation starts from the date of disbursement of loan but rather from the last payment or default date. However, this is only the case if the last payment was made within the specified limitation period (12 years). In the present case, the Appellant had received and signed documents, including a loan agreement, certificate of charge creation and surrender of agricultural passbook. However, due to the nature of such a mortgage involving agricultural land and its produce, the applicable time is not three years but twelve years from when the money becomes due. In the event of failure on the part of the Respondents to pay off their liabilities, the appellant bank should have filed a recovery suit against them within twelve

years as envisaged under Article 132 of L.A, 1908. The said provision of law provides the limitation period of "twelve years" when the money sued for becomes due to enforce payment of money charged upon immovable property. As against that, the recovery suit filed by the appellant bank beyond the prescribed period of limitation. Such payment made would not extend the period of limitation. The record also reflects that no application for seeking discretionary relief by the Appellant-bank was filed in Banking Court to satisfy it that there was sufficient cause for not filing Suit within time.

9. Moreover, Section 24 of the Ordinance provides that save as otherwise provided in this Ordinance, the provisions of the Limitation Act shall apply to all cases instituted or filed in Banking Court after coming into force of this Ordinance and a Suit under Section 9 of the Ordinance, may be entertained by the Banking Court after a period of limitation, prescribed therein has expired if the plaintiff satisfies the Banking Court that there was sufficient cause for not filing the Suit within the stipulated time. The record reflects that no such application for seeking this otherwise discretionary relief was preferred by the Appellant before the trial Court. Such being the position, we understand that the trial Court has rightly appreciated the question of limitation while handing down the above-impugned finding whereby the recovery suit of the appellant bank has been dismissed as being time-barred.

10. Notwithstanding, where a suit has been filed after the period limitation prescribed therefor by the first schedule of L.A, 1908, same is liable to be dismissed under Section 3 of L.A, 1908, and the trial Court is under the bounden duty to take notice of a question of limitation for the simple reason that provision of Section 3 of L.A, are couched in a mandatory form empowering the Court before whom Suit has been filed, to dismiss the same if it is found not brought the Court within the time prescribed by the first schedule of L.A, 1908. It is by now settled principle of law that limitation is not mere technicality. Once the period of limitation expires, the right is accrued in favour of the contesting party by operation of law, and the same cannot be ignored lightly. In this context, we rely upon the case of **Asad Ali and others vs |The Bank of Punjab and others (PLD 2020 Supreme Court 736**, wherein Apex Court has held as under: -

"10. _ _ _ _ _ It is settled law that limitation is not a mere technicality (or a hyper technicality as it had been termed by the Tribunal). Once limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away."

11. In view of the above discussion, the impugned judgment and decree are thus correct in law and do not warrant interference by this Court. The appeal, sans merits, is accordingly dismissed.

JUDGE

JUDGE