

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA**

Present:  
Muhammad Saleem Jessar  
& Jawad Akbar Sarwana JJ

**Hafiz Khair Muhammad Choliani**

**v.**

**Zarai Tarqiati Bank Ltd. and Others**

***First Civil Appeal No.D- 01 of 2015***

Applicant: Hafiz Khair Muhammad Choliani s/o Ghulam Sarwar Choliani, through Mr. Abdul Rehman A. Bhutto, Advocate.

Respondent No.1: Zarai Tarqiati Bank Ltd. Branch Office at Warrah, through Mr. Fiaz ud Din son of Badaruddin Abro, Manager ZTBL Warah; and

Respondent No.2: Allah Bux son of Muhammad Faizal Junejo AVP/Incharge Legal and Litigation Unit, ZTBL, Larkana Zone through Mr. Abdul Ghafar Shaikh, Advocate for Respondents No.1 and 2.

Date of Order: 17.01.2024

Date of Judgment: 07.02.2024

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

**Jawad A. Sarwana, J:** The Appellant/Defendant-Customer, Hafiz Khair Muhammad Choliani s/o Ghulam Sarwar Choliani (hereinafter referred to as “Hafiz KM Choliani”), a customer of the Respondent/Plaintiff-Bank (“Zarai Tarqiati Bank Limited”)(hereinafter referred to as “ZTBL”), has filed this First Appeal No.D-01 of 2015 under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (hereinafter referred to as “the FIO, 2001”) against the Judgment dated 20.03.2015 and Decree dated 21.03.2015 passed by the Banking Court No.I at Larkana (‘the trial court’) in Suit No.29/2014 in the sum of Rs.505,813/-.

2. The brief facts leading to the Appeal are that in 2009/2010 Hafiz KM Choliani availed a finance facility under the Sada Bahar Scheme of Rs.359,100 from ZTBL (LC No.187031). As security for the loan of Rs.359,100, Hafiz KM Choliani mortgaged with ZTBL his several agricultural lands as shown in the Pass Book totalling 47-31 acres situated in Deh Gul Buriro, Taluka Warah, District Kumber Shahdad Kot, Sindh (detailed in paragraph 4 of the Plaint and the opening paragraph of the impugned Judgment). Hafiz KM Choliani agreed to repay the loan in easy installments of 12 months but paid Rs.200/- only. When ZTBL demanded repayment of the outstanding amount of Rs.508,813, which included markup, etc., he failed to fulfil his payment obligations. In September 2014, ZTBL filed Banking Suit No.29/2014 against him. Service was affected upon him, and he filed his Leave to Defend Application, which was allowed by the trial court vide Order dated 10.12.2014. The trial court settled the issues, recorded evidence, and after hearing arguments, passed the impugned Judgment and Decree.

3. The Counsel for Hafiz KM Choliani raised two grounds for setting aside the impugned Judgment and Decree; essentially that (i) the agricultural lands were mortgaged in connection with a different finance facility availed by him in 1999, and (ii) there was no subsequent (second) finance availed by him in 2010-11, as evidenced by his NIC which did not match with CNIC linked to the 2009/2010 finance facility. He claimed that Hafiz KM Choliani's CNIC was issued first in 2004 and expired on 31.12.2014, whereafter he was issued a smartcard on 01.01.2014. He contended that none of these IDs were either cross-referenced or mentioned or attached to the finance; hence, Hafiz KM Choliani did not avail any finance from ZTBL. He argued that only old finances were availed under the old NIC and no new finance.

4. The Counsel for ZTBL argued that the Plaintiff-Bank had produced in evidence a Statement of Account duly verified under the

Banker's Books Evidence Act, Originals of the Promissory Note signed by Hafiz KM Choliani, his Original Pass Book, etc. The documents produced by ZTBL showed that Hafiz KM Choliani availed finance of Rs.359,100 on 30.12. 2009 vide L.C. No.187031 for fertiliser under the Sada Bahar Scheme. Nothing was brought on record through documentary evidence by Hafiz KM Choliani to contradict the bank's assertions. ZTBL's Counsel submitted that the customer in question availed finance in 1999 and 2000 and, once again, in 2009/2010. The Original Pass Book produced by the bank confirmed the last finance facility availed by Hafiz KM Choliani. He submitted that the old NIC identified the Customer as Hafiz KM Choliani and was accepted by the parties. The Appellant/Defendant-Customer availed the finance.

5. We have heard the learned Counsels, reviewed the record as available in the Appeal and the Banking Suit evidence files and read the Impugned Judgment and Decree.

6. We have perused the Original Pass Book No.452511 dated 07.07.1999 issued by ZTBL, which is available in the evidence file. Page 2 of the Pass Book mentions Hafiz KM Choliani's NIC No.424-53-034571 and his passport-sized photo. A stamp of the Mukhtiarkar Warah attests Hafiz KM Choliani's photograph. He duly signed page 3, and all the lands are well listed on subsequent pages of the Pass Book. We have also seen the Original Application Form bearing LC No. 187031 dated 30.12.2009 pertaining to the loan disbursement in question. The Application identifies Hafiz KM Choliani as the applicant, states his parentage, provides details of the lands mentioned in the Pass Book, identifies the Pas Book as 452511, states the loan amount and is duly signed by Hafiz KM Choliani. Two witnesses have also attested the said application form, and a passport-sized photograph of Hafiz KM Choliani and a photocopy of the old NIC are attached to the application form. The photograph on the application visibly shows the same person as the one shown in the Pass Book. The two photographs are of the same person, Hafiz

KM Choliani, with a photograph of him shown as a younger person (stapled to the Pass Book presumably from 1999) and another photograph of him appearing as an older person (attached to the application form from 2009). Undoubtedly, the two photographs of Hafiz KM Choliani, apparently 10 years apart, positively ID the same person, that is, the Appellant/Defendant-Customer. Finally, we also noted that the photo of Hafiz KM Choliani, as seen on his old NIC No. 424-53-034571 issued on 15.08.1995, matches the two passport-sized pictures from 1999 and 2009 available in the Pass Book and the Application Form, respectively. We have no doubt that the material produced in evidence proved that the finance concerned was availed by the same individual, the Appellant/Defendant-Customer, Hafiz KM Choliani. The Appellant/Defendant-Customer produced no evidence to suggest that the mortgaged Suit Lands mentioned in the Pass Book had been redeemed prior to 2009/2010. In light of the above materials, the contention raised by the Counsel for Hafiz KM Choliani that as there is no new CNIC of the Appellant/Defendant-Customer of the finance availed in 2009/2010, the person who availed the finance is not Hafiz KM Choliani carries no weight. Hafiz KM Choliani has signed the completed application form, which is duly witnessed. The Appellant produced no evidence to contradict the execution of the said Application form duly signed by him. The final nail in the coffin is that the NADRA Smart Card of Hafiz KM Choliani, which he produced in evidence, on the reverse side of the Smart Card just below the Quick Reference (QR) code, mentions Hafiz KM Choliani's old NIC No. 424-53-034571. We find no force in the contention raised by the learned Counsel for the Appellant/Customer-Defendant, Hafiz KM Choliani, that some other Hafiz KM Choliani availed the finance. The defence put forward by Hafiz KM Choliani is rejected.

7. We do not find that the learned trial court Judge has fallen into any error or passed the impugned judgment and decree contrary to law.

8. In view of the above, the impugned Judgment dated 20.03.2015 and Decree dated 21.03.2015 passed by the Banking Court No.I at Larkana in Suit No.29/2014 are proper and based on facts and law. They do not suffer from any illegality that calls for interference. Accordingly, this Appeal is dismissed, and the impugned Judgement and Decree are hereby confirmed.

9. The parties are left to bear their own costs.

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