

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

1st Civil Appeal No. D-05 of 2020

Before:

Mr. Justice Muhammad Saleem Jessar,
Mr. Justice Jawad Akbar Sarwana,

Munwar Ali Soomro s/o Lal Muhammad Soomro

v.

National Bank of Pakistan & Another

Appellant : Munwar Ali Soomro s/o Lal Muhammad
Soomro through Mr. Ashique Hussain
Kalhoro, Advocate

Respondent No.1. : National Bank of Pakistan
Respondent No.2. : The Manager Branch at Main Branch
Larkana through Mr. Bashir Ahmed
Dargahi, Advocate

Mr. Oshaq Ali Sangi, Assistant Attorney
General

Date of Hearing : 28.02.2024

Date of Judgment : 27.03.2024

J U D G M E N T

JAWAD AKBAR SARWANA, J.: Through this 1st Civil Appeal, the appellant, Munwar Ali Soomro s/o Lal Muhammad Soomro (hereinafter referred to as the "Appellant-Customer"), has challenged the impugned Judgment and Decree dated 11.02.2020 passed by the Banking Court No.1 at Larkana in favour of National Bank of Pakistan Limited ("NBP")(hereinafter referred to as "Respondent-Bank") in Banking Suit No.74/2009 filed jointly and severally against the Appellant-Customer, and his two Guarantors of the said finance facility, namely, Ashraf Ali s/o Arbab Ali Abbasi and Khalid Hussain s/o Muhammad Qasim Soomro (hereinafter referred to singly as "the Guarantor" and jointly as "the two Guarantors") under the Financial Institutions (Recovery of Finances) Ordinance ("FIO"), 2001. The

Appellant-Customer should have impleaded the two Guarantors as Respondents in the titled Appeal, which he has not.

2. The brief facts of the case are that the Appellant-Customer was a former employee of the Respondent-Bank working as O.G.-1/Cash Custodian at the Respondent-Bank's Naudero Branch. On 18.04.2012, the Appellant-Customer availed finance facility from the Respondent-Bank towards a house-building loan. The loan was to be repaid over a period of 15 years by 15.04.2027; however, the Appellant-Customer defaulted on the repayment of his financial obligations to the Respondent-Bank.

3. In May 2013, the Respondent-Bank alleged that the Appellant-Customer committed fraud, embezzled bank funds, and suspended him from service. Aggrieved by this Suspension Order dated 13.05.2013, the Appellant-Customer filed C.P. No.D-180/2015 in the High Court of Sindh Circuit Court Larkana and obtained a favorable Order dated 26.01.2017 from the Division Bench directing the Respondent-Bank to clear all his dues for the period from 13.05.2013 to 31.08.2016 in accordance with law. The Respondent-Bank filed an appeal to the Supreme Court of Pakistan, CPLA No.979/2017, which was dismissed vide the Supreme Court's Order dated 08.01.2016 with the following observation:

“4. A look at the impugned Order would reveal that it was passed with the consent of the petitioner [NBP]. The points raised before us have neither been raised in the comments filed by the petitioner nor at the time the impugned order was passed, When this being the case, we wont reverse or upset the impugned order on the basis of the grounds which appear to have surfaced during the course of arguments addressed at the bar before this Court.”

4. During the above-mentioned civil litigation between the Appellant-Customer and the Respondent-Bank, the Bank issued

Demand Notices on 10.08.2016, 26.10.2016 and 27.03.2017, asking the Appellant-Customer to fulfill his payment obligation under the finance, but to no avail. Accordingly, on 26.08.2019, the Respondent-Bank filed the above-mentioned Banking Suit No.74/2019. After dismissing the application for leave to defend vide Order dated 16.01.2020 and recording of evidence, the Banking Court No.1 at Larkana passed the impugned Judgment and Decree dated 11.02.2020 in the sum of Rs.4,534,734/- plus costs and cost of funds as admissible as per law till the realization of the above amount.

5. The learned Counsel for the Appellant-Customer contended that the Banking Court did not give him an opportunity to be heard and did not consider the impact of the Order dated 26.01.2017 passed by the Division Bench of this Court in CP No.D-180/2015 against the Respondent-Bank. Hence, he claimed that the impugned Judgment and Decree were liable to be set aside.

6. The learned Counsel for the Respondent-Bank argued that the Appellant-Customer was its former employee who had committed fraud and embezzled the bank. The Counsel contended that the Appellant-Customer was a habitual defaulter and that apart from Banking Suit No.74/2019 decreed against him (the subject matter of this Appeal), several other decrees were pending against him in the Banking Court No.1 at Larkana. He submitted the following details by way of a Statement dated 28.02.2024, which included a Statement prepared by the AVP/Chief Branch Manager, NBP, Main Branch Larkana:

- (i) Ex. No. 48/2020: Decretal amount Rs.3,883,106.75 as per Judgment and Decree dated 28.09.2020 passed by the Banking Court No.1 at Larkana, including cost of funds upto 31.07.2022 (House Building Finance Loan in Banking Suit

No.74/2019.	Rs.4,534,734.00
(ii.) Decretal amount Rs.1,270,526 as per Judgment and Decree dated 28.09.2020 passed by the Banking Court No.1 at Larkana, including cost of funds upto 31.07.2022 (Motor Car Purchase Loan) in Banking Suit No.42/2020.	Rs.1,326,908.00
(iii.) Decretal amount of Rs.120,148 as per Judgment and Decree dated 28.09.2020 passed by the Banking Court No.1 at Larkana, including cost of funds upto 31.07.2022 (Computer Purchase Loan) in Banking Suit No.41/2020.	Rs. 1,25,512.00

7. The learned Counsel for the Appellant-Customer was supplied a copy of the above Statement, and he did not object to its contents. Mr. Bashir Ahmed Darghai, representing the Respondent-Bank, conceded that the Respondent Bank, as of 28.02.2024, owed the Appellant-Customer Rs.3,131,709.75 as per Rules 38 of SSR (Staff Service Rules, 1973) Statutory Rules. He proposed that the Respondent-Bank would adjust/set off the sum of Rs.3,131,709.75 against the Decretal amount outstanding against the Appellant-Customer. He added that the Bank would reserve the right to pursue recovery of the balance decretal amount against the Appellant-Customer before the Executing Court in Execution Application No.48/2020 pending before the Banking Court No.1 at Larkana. The learned Counsel for the Appellant-Customer did not object to the proposal made by the Respondent-Bank's Counsel, as noted above and pleaded that this bench first determine the legality of the impugned Judgment and Decree challenged in this appeal, and if this Court concluded that the impugned Judgment and Decree were in accordance with the law, then the terms and conditions of compromise were acceptable to him subject to such adjusted/modified balance decretal amount be subject to further adjustment/setoff in terms of the simple interest payable on the

Appellant-Customer's dues of salary payable from the date of the Order of the High Court of Sindh Circuit Court Larkana in CP No.D-180/2013, i.e. Order dated 26.01.2017 till realization. This bench's Order dated 28.02.2024 recorded proceedings as follows:

“ . . .Mr. Dargahi, also submits another simple statement showing claim of Petitioner in terms of his salaries and perks as decided by this Court on 26.1.2017 in the Const. Petition No.D-180 of 2015. He confirms that this amount payable by the Bank to the Appellant is Rs.3,131,709.75 as of 28.02.2024. The Counsel for the Respondent Bank. . .will be satisfied if by deciding this Appeal the executing Court may be directed to adjust/ set-off the decretal amount which includes principle markup and cost of funds up-to-date payable by the Appellant/customer to the Bank against the amount of salaries of the Appellant as per the Judgment dated 26.01.2017 payable by the Bank to the Customer including simple interest for delayed payment. After adjustment of the above sums by the Executing Court the Bank shall be at liberty to pursue its balance decretal claim as per the provisions of the Financial Institutions (Recovery of Finances) Ordinance 2001. The executing Court may consider submissions of the Appellant in terms of today's order including options for deferred payment, if any, as agreed between the parties. . . .”¹

8. We have heard the learned Counsels for both parties and the Assistant Attorney General and perused the appeal file and the R&P of Banking Suit No.74/2019.

9. At the outset, the Appellant-Customer has identified neither any material irregularity or illegality in the impugned Judgment and Decree dated 11.02.2020. There is absolutely no ground for the Appellant-Customer to claim that he has not been heard when the Banking Court has considered his Application for Leave to Defend and dismissed the same with reasons vide its Order dated 16.01.2020. The Appellant-Customer did not raise any substantial questions of law or fact. Further, both the Appellant-Customer and his Counsel remained absent during the hearing of the leave to defend application. Further, when the Respondent-Bank in exparte evidence

¹ There are certain inadvertent typographical errors in the Order of 28.02.2024, which we have removed by placing the ellipses.

filed affidavit in evidence, none was present on behalf of the Appellant-Customer and no intimation was received from him. The Bank's witness could have been cross-examined by the Appellant-Customer but he chose not to do so. Ultimately, the Banking Court passed the impugned Judgment with reasons and decreed the Banking Suit No79/2019 against the Appellant-Customer and the two (2) Guarantors.

10. The Banking Suit No.74 of 2019 was defended by the Appellant-Customer and Khalid Hussain Soomro (Defendant No.3/Guarantor), who filed a Leave to Defend Application. Meanwhile the matter proceeded ex-parte against Ashraf Ali Abbasi (Defendant No.2/Guarantor). The two Guarantors did not file any appeal against the Impugned Judgment and Decree and have accepted their liability. The Appellant-Customer alone preferred an appeal under Section 22 of FIO, 2001.

11. Additionally, the learned Counsel for the Appellant-Customer's plea that the Banking Court should have adjusted the impugned judgment and decree against the amount payable by the Respondent-Bank to the Appellant-Customer is not persuasive. The Appellant-Customer had no reason to claim set-off in the Banking Suit No.74/2019 against the Order dated 26.01.2017 passed by the High Court of Sindh Circuit Court Larkana in CP No.D-180/2013. The Banking Court was tasked to decide Banking Suit No.74/2019 under the FIO, 2001. The Banking Court had no reason to traverse beyond the scope and subject matter of the Banking Suit while deciding the application for leave to defend. Further, at that time, the Respondent-Bank was not interested in any settlement and the Banking Court, exercising special jurisdiction under FIO, 2001, had no reason to decide the Application for Leave to Defend beyond the parameters of Section 10 of FIO, 2001. Additionally, even after deciding the leave to defend application and recording evidence, the Division Bench

Order dated 26.01.2017 was alien to the proceedings before the Banking Court, and in the facts and circumstances of the case, the Banking Court rightly did not take up the issue. We are *ad idem* with the decision of the Banking Court. The subject matter of the Division Bench's Order dated 26.01.2017 in writ jurisdiction has no nexus with the financial obligation of the Appellant-Customer under the banking jurisdiction. Accordingly, the impugned Judgment and Decree passed by the Banking Court is proper and does not call for any interference.

12. We now come to the next aspect of the matter. While at this stage, we are inclined to accept the impugned Judgment and Decree dated 11.02.2020, we are cognizant that the Counsels for the parties have accepted certain settlement terms, *inter se*, that will modify the decree dated 11.02.2023 passed by the Banking Court No.1 at Larkana. We recorded these in this Bench's Order dated 28.02.2024 (reproduced in paragraph 7 above), which are now part of this Appellate Judgment.

13. For the reasons recorded herein above, we are inclined to partly allow the 1st Appeal No.D-05/2020 to the extent of the compromise between the parties as recorded herein. Further, while exercising powers under Section 151 CPC read in the light of Section 7 of FIO, 2001 and as agreed between the contesting parties during their submissions, we order that the decretal amount payable by the Appellant-Customer to the Respondent Bank, including yet to be calculated cost of funds to be determined under Section 3(2) of FIO, 2001 and costs from the date of the impugned Judgment, i.e. 11.02.2020 to the date of realization payable by the Applicant-Customer to the Respondent-Bank are adjusted/set off against the sum of Rs.3,131,700.75 as per Rule 38 of the SSR, 1973 (Statutory Rules) payable by the Respondent-Bank to the Appellant-Customer. Additionally, the simple interest of 5% is deemed to be the reasonable rate of interest as determined by us under Section 34

CPC and will be applicable on this amount payable by the Respondent-Bank to the Appellant-Customer from 26.01.2017 upto the date of the realization. We note that the Appellant-Customer has agreed to waive his total claim for entitlement as per Rule 38 of SSR 1980 (non Statutory Rules) of Rs.4,142,736 as suspension pay/allowance.

14. Given the above, the Impugned Judgment and Decree stands modified in the above terms with directions to the Executing Court in Execution No.48/2020 to adjust the decretal amount as above.

9. If after the adjustment/setoff, as above, the Appellant-Customer still has an outstanding liability payable to the Respondent-Bank against the modified decree as above, then the Respondent-Bank shall be at liberty to pursue and prosecute the same against the Appellant-Customer, in execution proceedings, in accordance with law. Office is directed to issue notice to the Banking Court No.1 at Larkana, along with a certified copy of the Judgment, to recommence execution proceedings in terms of this Judgment.

15. Parties shall bear their own costs.

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