

ORDER SHEET
 IN THE HIGH COURT OF SINDH, KARACHI
 First Appeal No.57 of 2015
 (National Bank of Pakistan Vs. Abdul Rahim Jamoot and three others)

Dated	Order with signature of Judge
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Present:
 Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial

Hearing case

1. For order on office objection/ reply at A
2. For hearing of main case

Dated 28.03.2024

Mr. Ghulam Sarwar Korai Advocate for the Appellant

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Muhammad Shafi Siddiqui, J – The Respondents were ultimately served through publication but no one has attended the proceedings, hence, we have heard the learned counsel and perused the record.

2. A suit for recovery of Rs.2.7 million approximately, as Suit No. 37 of 2000 was filed. The principal debtor was the Respondent No.1, whereas, the Respondent Nos. 2, 3 and 4 were said to be guarantors/mortgagors. There were some pleading errors in the prayer clause of the plaint; although they have sought a decree in the sum of Rs.2.7 million approximately against all Respondents but in prayer clause “B” they have missed out to incorporate a mortgaged decree against Respondent Nos. 2, 3 and 4. Be that as it may, the Respondent No.1 filed leave to defend application which was dismissed, whereas, the Respondent No.4’s application was allowed as to whether he was a mortgagor, guarantor or otherwise. Evidence was recorded. Surprisingly the Banking Court recorded only four issues, which are reproduced as under:-

- “1. Whether the defendant No.4 stood guarantor as security for the repayment of the finance granted to the

defendant No.1 and executed such guarantee dated 14.03.1990 filed as annexure 'I' with the plaint?

2. Whether the defendant No.4 also mortgaged his property as guarantor for the said finance facility in favour of the plaintiff's bank and executed such fresh mortgaged deed, promissory note and memorandum of deposit of title deed 26.07.1992 filed as annexure J/1 with the plaint?
3. Whether the said defendant No.4 is liable to pay the outstanding finance liability of the defendant No.1?
4. What should the decree be?"

3. The Banking Court did not frame any issue with regard to the principal borrower and hence, the liability against rest of the Respondents being guarantors/mortgagors. The judgment did not disclose as to whether the principal borrower was liable to repay any amount as no issue was framed in this regard. It is the principal duty of the Court to have framed the issues in view of the pleadings of the parties. It was a suit for recovery against the Respondent No.1 and rest of the Respondents being guarantors/mortgagors. We are of the view that the crucial issues have not been settled by the Banking Court as neither the issues were framed nor the findings were given by the Banking Court. Respondent No.4 is claimed to be an equitable mortgagor, whereas, the other Respondents are also claimed to be mortgagors of their respective properties. Be that as it may, the judgment is absolutely silent about the liability and responsibility of the Respondent No.1 being the principal borrower. Once the principal borrower is adjudged to be defaulter and liable to pay the amount as claimed, only then other Respondents could have been saddled with the responsibility as being mortgagor.

4. In view of the above appeal is allowed. The impugned judgment and decree is set aside and the matter is remanded back to the banking Court for deciding the appropriate issues. The appellant's counsel may assist the

Court in reframing the issues arising out of the pleadings where after the judgment and decree be passed in accordance with law.

JUDGE

JUDGE

Anjad PS