

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. B-37 of 2020

[United Bank Ltdv.....Muhammad Ismail Dossa]

Date of Hearing : 27.08.2024
Date of decision : 01.10.2024

Plaintiff through : Mr. Aijaz Ahmed Shirazi, Advocate
Defendant through : Mr.Saalim Salam Ansari, Advocate

ORDER

Arbab Ali Hakro, J:- The crux of this determination is CMA No. 501 of 2021, filed under Section 10 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (“**FIO**”) by the defendant.

2. The facts in detail are that the plaintiff-bank initiated legal proceedings by filing Lawsuit No.350/2017 in the First Instance Court in Dubai seeking the recovery of a finance amount totalling AED 260,724,065. The Court at Dubai decreed the suit that the defendant is obligated to pay the plaintiff-bank AED 2,076,339.17 (two million, seventy-six thousand, three hundred and thirty-nine Dirhams and seventeen Fils) along with simple interest accruing at 9% per annum starting from August 30, 2015, until full payment is made. The defendant and the plaintiff-bank subsequently filed appeals before the Court of Appeal in Dubai. The defendant's appeal was dismissed, whereas the plaintiff-bank's appeal was partially successful, resulting in an amended adjudicated sum of AED 2,534,804.48 (two million five hundred thirty-four thousand eight hundred and four Dirhams and forty-eight Fils). The plaintiff-bank filed an Execution Application in the Court of First Instance in Dubai. Following the auction of the defendant's residential apartment in Burj Khalifa, an amount of AED 892,498 was released to the plaintiff-bank, which was applied towards partial adjustment of the outstanding liability. The plaintiff-bank has filed a fresh suit before this Court under Section 9, read with Section 29 of the FIO, seeking recovery of AED 2,745,345.31 along with interest, default interest, cost, and other charges. This action is based on the claim that the defendant has left Dubai and is currently residing in Pakistan, with no remaining property in Dubai.

3. At the very outset, learned counsel for the defendant initially raised legal objections that the plaintiff-bank has not complied with the provisions of Section 9(2) of the Financial Institutions (Recovery of Finances) Ordinance (FIO) read with Section 2(8) of the Bankers' Books Evidence Act, 1981 (the “**Act of 1981**”), while filing the present suit, and therefore, it is liable to be dismissed. He further contends that the Statement of Account filed by the plaintiff-bank is improper and that the suit is filed by an unauthorized person. He argued that this Court lacks

jurisdiction to entertain the suit and is also barred by limitation; therefore, it is liable to be dismissed. He further contended that the defendant had discharged all his liabilities, and the cheques given by the defendant towards payment in instalments were not presented by the plaintiff-bank for encashment. Therefore, the defendant made the payment equivalent to the cheques to the plaintiff in lieu of the cheques. He also claimed that the defendant has paid an excess amount, but the plaintiff-bank is claiming interest upon interest, and if the same is excluded, the defendant has paid an excess amount for which the defendant is entitled to a counterclaim. He also contended that no adjustment of interest is permissible under State Bank of Pakistan's Circular No.13 and 32 of 1984. He argued that the amount prayed for in the plaint contains erroneous, incongruous, and inconsistent entries. In conclusion, he prayed for the application to be allowed as substantial questions of law and facts are involved. To support his submissions, learned counsel relied on the precedents reported as **PLD 1999 S.C 1026 and PLD 1997 S.C 315.**

4. Conversely, learned counsel for the plaintiff-bank contended that the statement of accounts annexed with the plaint is duly certified under the Act of 1891, as provided under Section 9(2) of the Financial Institutions (Recovery of Finances) Ordinance (FIO). He further contended that only the principal can challenge the Power of Attorney and that the plaint has been duly filed through an authorized person. He argued that the defendant had contested the legal proceedings before the Courts in Dubai, and the suit of the plaintiff-bank was decided on merits. Therefore, the same is conclusive as provided under Section 13 C.P.C. He contended that the cheques provided by the defendant were as security and were not presented before the concerned bank for encashment. He also contended that there is no substantial question of law and facts raised by the defendant to require evidence. Thus, the application is liable to be dismissed. To support his contention, learned counsel relied on the precedents reported as **PLD 2017 S.C 95, 2020 CLD 49, 1990 MLD 1779, 2007 CLD 469, 2003 CLD 1033, and 2011 CLD 1655.**

5. I have heard the respective learned counsel and have considered the documentation arrayed before me. In the present case, the foreign Court Judgment is involved. Legally, after obtaining a foreign judgment, the plaintiff-bank has two options for enforcement in Pakistan. Firstly, a direct execution under Section 44-A, C.P.C, if the foreign judgment is from the United Kingdom or any country with a reciprocating treaty with Pakistan, the plaintiff-bank can file an application directly to the District Court for the execution of the decree. Section 44-A C.P.C provides for the execution of decrees passed by courts in reciprocating territories as if they had been passed by the District Courts in Pakistan. This provision simplifies the enforcement process by allowing the foreign judgment to

be executed without the need for a fresh suit. Under an arrangement of reciprocity, the Federal Government of Pakistan issued a notification on March 6, 2007 (S.R.O. 208(I)/2007) through its Law, Justice and Human Rights Division. This notification, issued under the powers conferred by Section 44-A C.P.C, declares the United Arab Emirates (U.A.E) as a reciprocating territory. Additionally, it recognizes the Court of Appeal of the U.A.E as a Superior Court for the purposes of Section 44-A C.P.C. This means that judgments from the UAE's Court of Appeal can be executed in Pakistan as if they were judgments from Pakistani courts.

6. Secondly, filing a Suit under Section 13, C.P.C, alternatively, the plaintiff-bank can file a suit in Pakistan under Section 13 of the C.P.C, based on the foreign judgment, treating it as a cause of action. This Section deals with the conclusiveness of foreign judgments and outlines the conditions under which a foreign judgment is considered conclusive. The plaintiff must prove that the foreign judgment meets the criteria set out in Section 13, such as being pronounced by a court of competent jurisdiction, being given on the merits of the case, and not being obtained by fraud or in breach of natural justice. In the case at hand, the plaintiff-bank has opted for the latter course, i.e., filing a suit under Section 13, C.P.C., treating the foreign judgment as a cause of action.

7. In the case at hand, the matter has already been decided by the foreign Court in Dubai, and the same has also been admitted by the defendant in the application under disposal.

8. Now advertent to the merits of the application in hand, the defendant raised the first question that that suit has not been instituted by the authorized person is addressed by the provisions of Section 9 of the FIO, which stipulates that when a customer or a financial institution defaults in fulfilling any obligation related to finance, the financial institution or the customer may institute a suit in the Banking Court by presenting a plaint verified on oath. In the case of a financial institution, the plaint must be verified by the Branch Manager or another financial institution officer duly authorized by power of attorney or otherwise. In the present case, the suit was instituted by the plaintiff-bank (financial institution) through duly authorized attorneys Mr. Imran Khan and Mr. Muhammad Qasim. Mr. Imran Khan, an officer of the bank, was authorized through a Power of Attorney executed in his favour on 29.7.2016 by the Executive Officers of the plaintiff-bank. Therefore, the contention of the learned counsel for the defendant that the suit has not been instituted by an authorized person is misconceived. The plaintiff-bank has complied with the requirements of Section 9 of the FIO by instituting the suit through duly authorized attorneys.

9. The second question raised by the learned counsel for the defendant pertains to the compliance of the statement of account filed by the plaintiff-bank with the provisions of Section 9(2) of the FIO. To ascertain whether the provided

statement of account meets the criteria stipulated in Sections 9(2) and 9(3) of the FIO and Section 2(8) of the Act of 1891, it is imperative to dissect the requirements and juxtapose them with the provided information. Section 2(8) of the Act of 1891 delineates a "certified copy" as a copy of an entry in the books of a bank, accompanied by a certificate at the foot of such copy stating: "It is a true copy of such entry; the entry is contained in one of the ordinary books of the bank; the entry was made in the usual and ordinary course of business; the book is still in the custody of the bank; if the copy was obtained by a mechanical or other process ensuring accuracy, a further certificate to that effect; each certificate must be dated and subscribed by the principal accountant or manager of the bank with their name and official title." Section 9(2) of the FIO mandates that the plaint must be accompanied by a statement of account duly certified under the Act of 1891, along with all other relevant documents related to the grant of finance. Section 9(3) of the FIO necessitates that the plaint must explicitly state: (a) the amount of finance availed by the defendant from the financial institution; (b) the amounts paid by the defendant to the financial institution and the dates of these payments; and (c) the amount of finance and other amounts related to the finance payable by the defendant to the financial institution up to the date of the institution of the suit.

10. The statement of account attached with the plaint on pages 207-253 carries a note at the end of almost every page stating:

“Certified that the above is a true copy of entries made in the ordinary course of business in the Account of Mr. Mohammad Ismail Dossa in our ledge/ledgers is/are ordinary books of our bank and is/are still in our possession.”

11. The statement of account on Page No.253 elucidates the amount of finance availed by the defendant, the amount repaid by the defendant and the total decretal amount claimed by the plaintiff-bank payable by the defendant. The pages of the statement of account are duly signed and stamped by the concerned officers of the plaintiff-bank. The statement of account appears to meet the criteria as per Sections 9(2) and 9(3) of the FIO and Section 2(8) of the Act of 1891. The statement of account is duly certified, contains the requisite details, and is signed and stamped by the concerned officers. Therefore, it is to be considered legally compliant with the aforementioned sections. Thus, the contention of the learned counsel for the defendant is of no avail.

12. Section 10(8) of the FIO provides that a Banking Court shall grant the defendant leave to defend the suit if it is of the view that the defendant has raised substantial questions of law or fact in respect of which the evidence needs to be recorded. In the present case, whether the defendant has raised several claims that warrant consideration as substantial questions of law or fact necessitating

the recording of evidence is to be seen. Firstly, the defendant asserts that he has cleared all his liabilities by claiming that the adjustment of the auction/sale of the mortgaged property was conducted at a throwaway price, which is significantly lower than the principal amount and the price at which the mortgaged property was purchased. However, the property of the defendant was auctioned by the Court in Dubai, and such a claim regarding the sale of the mortgaged property at a low price has not been raised by the defendant before the Court in Dubai. The Order of the First Instance Court in Dubai reveals that the defendant was aware of the attachment of his mortgaged property¹. Therefore, the claim regarding the valuation and sale process of the mortgaged property does not raise a substantial question of fact that requires evidence to determine whether the sale was conducted fairly and in accordance with the law. The Order indicates that the sale was conducted in accordance with the procedural law regulating sales procedures, and the defendant was aware of the attachment and sale process.

13. Secondly, the defendant contends that he had provided cheques in advance towards "payment in instalment," which were not presented for encashment. He argues that the non-presentation of cheques should be interpreted as an indication that the defendant made the payment equivalent to the cheques to the plaintiff-bank. However, this claim does not raise a substantial question of fact regarding the handling and presentation of the cheques. It is admitted that these cheques were not encashed by the plaintiff-bank, and therefore, the amount equivalent to the cheques remains unpaid by the defendant to the plaintiff-bank. The claims raised by the defendant do not constitute substantial questions of law or fact that require the recording of evidence. The Order of the First Instance Court in Dubai and the handling of the cheques do not support the defendant's assertions. Therefore, the defendant's claims do not meet the criteria for granting leave to defend the suit under Section 10(8) of the FIO.

14. The foregoing discussion concludes that the defendant has not established a prima facie case for the grant of leave to defend the suit. Consequently, the application for leave is hereby **dismissed**. I would have proceeded to pass a decree; however, the learned counsel limited their arguments to the leave application during the submissions. The plaintiff must evince whether the interest

¹ "On 27/03/2019, the writ of enforcement was served on the Enforcement Debtor by publishing. On 29/04/2019, it was decided to attach a (residential apartment in Burj Khalifa, Plot No 191, Bldg No 2, Boulevard Central 2, Real Estate No 1507, Area 72,54 Sqm). On 13.5.2019, the decision was endorsed to the effect that aforesaid real estate was to be attached with the knowledge of the bailiff. On 11/07/2019, the attachment record was served on the Enforcement Debtor by publishing. On 27/07/2019, the Enforcement Debtor was notified of paying the debt within a month as of the date of notifying him of the payment by publishing, otherwise or else the real estate would be sold by auction. The Enforcement Debtor neither paid nor made a request to postpone the sale or dismissed such request. Therefore, it was decided that the sale was to be permitted at the venue, day and period of the auction, after determining a basis price for the real estate by the assigned committee for AED 936,975. Emirates Auction was entrusted to carry out the sale of the real estate, according to the procedural law regulating the sales procedures. The sale was announced, according to the requirements under Article 295.4, and was determined to be carried out on 09/10/2019. The highest bid was made by the bidder Ata Allah Khan Nick Mohammad for AED 941,975. So, the auction was awarded to Ata Allah Khan Nick Mohammad for AED 941,975. The procedures of the attachment and sale of the real estate were in accordance with the true law. The price was deposited by the bidder and his bid was approved on 19/10/2019 for AED 892,428, after discounting the commission of the entity entrusted with the sale. Regarding the expenses, the Court makes the awarded person obliged by paying them, pursuant to Article 161 of the Civil Procedure Code and Regulations No 57 of 2018."

amount has been accurately computed in accordance with the Foreign Judgment/Decree. Therefore, the office is directed to relist this matter for arguments.

JUDGE