

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui, C.J
Mr. Justice Jawad Akbar Sarwana.

High Court Appeal No.378 of 2019

Allied Bank Limited
Versus
Mr. Qamar Hussain Naqvi and others
.-.-.-.-.-.

Date of hearing: 31.01.2025
Date of Short Order: 31.01.2015
Date of Reasons: 03.02.2025

Mr. Mujtaba Ahmed Bajwa, Advocate for the Appellant.
Mr. Syed Masroor Ahsan, Advocate for Respondents.
.-.-.-.-.-.

J U D G M E N T

Muhammad Shafi Siddiqui, C.J.- The Allied Bank Limited filed a suit for recovery against the legal heirs of its employee Mr. Wajahat Hussain Naqvi. The said Wajahat Hussain Naqvi expired on 21st January, 2014, who was facing charges of alleged embezzlement; the suit however apparently was filed in November, 2015. The suit only seeks recovery of Rs.51 million from the legal heirs without any declaration/determination of such embezzlement. The suit was contested by the legal heirs who filed their written statement on 04.02.2016.

2. We have heard learned counsel and perused the material available on record.

3. The claim of the suit is about the alleged acts of fraud said to have been committed by the deceased. The claims were of different nature and bank cumulatively claimed as an amount recoverable from the employee on account of alleged fraud with bank. Some of the claims were based on the investigation report and were never taken to its logical end and others also surfaced as accusation, since never decided. Thus, there is absolutely nothing on record if

this alleged embezzled amount was identified in terms of any declaration of the Court and that the embezzled amount was invested in some of the properties, which were then devolved amongst the legal heirs.

4. The impugned order discussed in detail as to the liability of the legal heirs in the absence of any judicial determination as to the embezzled amount and as to the parking of the embezzled amount¹. The legal heirs under no stretch of imagination could be held answerable to the accusation of the nature referred above and be held liable for the payment of the alleged embezzled fund. The embezzled money had to be traced which is the main issue remained undermined. The act of malfeasance, misfeasance and/or nonfeasance is a claim which also has its own limitation in terms of the Limitation Act. The appellant was unable to raise any argument on this point as well contrary to the determination of learned Single Judge.

5. In the absence of any declaration as to the embezzled amount and disclosure of any chain of funds, which could have acquired shape of an asset in the name of the deceased, which then devolved amongst the legal heirs or any ostensible ownership, a decree for the recovery of amount on account of alleged accusation only, could not be passed. The appeal against the dismissal of the suit is thus adjudged to be a futile attempt through this appellate Court and was dismissed on 31.01.2025 by a short order and the above are the reasons.

CHIEF JUSTICE

JUDGE

Ayaz Gul

¹ SBLR 2024 Sindh 923 [State v. Ahsan Baseer and others].