IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

1st Appeal No. D- 13 of 2024

Before:
Mr. Justice Arshad Hussain Khan
Mr. Justice Syed Fiaz-ul-Hassan Shah

Mst. Shahida Khatoon ---------- Appellant

Versus

Zarai Taraqiati Bank Ltd ---------- Respondents

Mr. Muhammad Ibrahim Khunejo, advocate for appellant

Date of hearing
and Order : 20.05.2025

O R D E R

ARSHAD HUSSAIN KHAN, J.- Through this First Appeal under Section 22 of Financial Institutions (Recovery of Finance) Ordinance, 2001 [‘the **Ordinance**’], the appellant has called in question Judgment and Decree dated 02.2.2024, passed by Banking Court-II, Hyderabad [‘the **trial Court**’], in Suit No.293 of 2022, whereby the said Suit filed by Zarai Taraqiati Bank Ltd. [respondent herein] against Mst. Shahida Khatoon [appellant herein] was decreed.

2. Brief facts of the case are that appellant applied for sanction of loan to the respondent bank; her application was considered and two loans were allowed to her (1) Rs.1,45,800 for a period of five years and (2) Rs.5,30,000/- for a period of one year. Subsequently the appellant failed to re-pay the loan amount, hence respondent-Bank filed Suit for recovery of Rs. 8,48,045/- before Banking Court-II, Hyderabad.

3. Upon service of summons, the appellant filed an application for leave to defend the suit through her advocate before the trial court which was dismissed in default and resultantly the suit of the respondent-bank was decreed as prayed by way of impugned judgment, hence the instant 1st Appeal.

4. Perusal of record reflects that this 1st Appeal was filed on 1.03.2024 and it was for the first time fixed in court on 7.3.2024 when while issuing notices to the other side, counsel was directed to file amended title impleading the passing authority of impugned judgment as respondent. The said order was not complied with and further the counsel failed to supply copies of Appeal and also failed to pay cost for issuance of notices to respondent; therefore, on 19.9.2024 the office fixed the matter for non-prosecution. The court as an indulgence allowed seven days’ time for compliance. Again the compliance was not made; therefore, on

11.12.2024 the office once again fixed the matter for non-prosecution; therefore, the matter was dismissed for non-prosecution. On 15.4.2025 i.e. after four months restoration application was filed on the ground that counsel on the date of dismissal of Appeal was unwell and the appellant being senior citizen was not aware about the fixation of the case, hence the Appeal was restored. However, till date the order of this court has not been complied with. Although said conduct of the appellant alone is sufficient to dismiss the present appeal in non-prosecution, yet this court while taking the lenient view has allowed the counsel to argue the matter on merit.

5. Learned counsel while reiterating the contents of appeal has contended that the impugned judgment and decree passed by the trial Court is illegal and unsustainable under the law. Further contended that leave to defend of the appellant was dismissed in default and on the same date in hasty manner without affording fair opportunity of hearing to the Appellant passed the impugned judgment and decree. Further contended that the right of fair trial has not been provided, which is a fundamental right under Article 10-A of the Constitution and in presence of such constitutional obligation, the courts are required to decide the matter on merits. In the end, he submits that impugned judgment and decree dated 02.02.2024 may be set-aside by granting unconditional leave to appear and defend the suit so that matter may be adjudicated afresh on merits.

6. We have heard the arguments advanced by the learned Counsel for the appellant and minutely perused the material available on record.

7. From the record, it appears that the respondent bank filed a recovery suit for a sum of Rs.8,48,045/- against the appellant before the trial Court on 22.11.2022. Record transpires that pursuant to the application of appellant, the respondent Bank sanctioned (i) Rs. 1,45,800/- ‘Live Stock Farming Mutton’ for the period of five years and (ii) Rs. 5,30,000/- ‘production loan Kharif Crops under KDS A’ for the period of one year and the amount was disbursed on 27.09.2017 under L.C. No. 176288 for development of her land by mortgaging her agricultural land. The appellant availed and utilized the said finance facility but she defaulted in repayment of above loan amount. On failure of the appellant to pay off her liability, the respondent bank filed a recovery suit against her. Pursuant to notices of the said suit, appellant filed leave to defend application through her advocate which was dismissed in default and for non-prosecution on 02.02.2024, followed by the impugned Judgment and Decree on the even date in favour of the respondent-bank.

8. The appellant has not disputed the fact that she availed the subject finance facility from the respondent bank; however there is nothing available on record which could show that she has paid any amount towards the said lability. The appellant has also failed to annex copy of her leave to defend application to show what stance she has taken in the said application. Further the memo of appeal is also silent about the said stance. The appellant has also failed mentioned the compliance she has not made resultantly her application for leave to defend was dismissed in default and non-prosecution.

9. From bare perusal of Section 10(1), (3), (4), (5), and (6) of the Ordinance, it appears that law enjoins upon the borrower to file leave to defend application in such form which contains a summary of the substantial questions of law as well as fact in respect of which evidence needs to be recorded, and to show in all fairness as to what amount he had availed from a financial institution, the payment so made by him to the financial institution and the amount which is accepted to be his liability to be finally paid to the Bank. It is by now a settled principle of law that when the application for leave to defend the Suit filed by the appellant did not fulfil the requirements of Section 10(3)(4)(5) and (6) of the Ordinance, such application was liable to be rejected as per the provisions so contemplated under Section 10(7) of the Ordinance and in consequence whereof, the allegation of facts so contained in the plaint were deemed to have been admitted as per the provisions of Section 10(1) of the Ordinance.

The Supreme Court of Pakistan in the case of *Apollo Textile Mills Ltd and others v. Soneri Bank Ltd* [2012 CLD 337], while interpreting the above provisions of the Ordinance, has expounded the responsibilities of the parties (customer and financial institution) vis-à-vis pleading and stating particulars of finance in definitive and clear manners. The consequence of non- compliance of Sections 9 and 10 of the Ordinance has also been explained, and complete guideline is given with the direction to the Banking Courts to remain within the parameter of claimed and disputed accounts.

10. Moreover, the consequence of accepting or rejecting the leave application is also clearly provided in the provisions of Section 10(11) and (12) of the Ordinance which read as under: -

> *"**10(11)** Where the application for leave to defend is accepted, the Banking Court shall treat the application as a written statement, and in its order granting leave shall frame issues relating to the substantial questions of law or fact, and, subject to fulfilment of any conditions attached to grant of leave, fix a date for recording of evidence thereon and disposal of the Suit.*

> ***10(12)*** *Where the application for leave to defend is rejected or where a defendant fails to fulfill the conditions attached to the grant of leave to defend, the Banking Court shall forthwith proceed to pass judgment and decree in favour of the plaintiff against the defendant."*

The above provisions noticeably reflect that acceptance of applications of leave to defend results in treating the same as a written statement, framing of issues as substantial questions of law and facts, followed by recording of evidence. When the leave application is rejected, the Banking Court is required to pass judgment and decree. Section 10(12) above, provides that upon rejection of leave application, the Banking Court shall forthwith pass judgment and decree. This proposition has elaborately been discussed by the Divisional Bench of this Court in the case of *Messrs United Bank Limited through Authorized Attorney vs. Banking Court No. II and 2 others* [2012 CLD 1556].

11. In the instant case the trial Court after dismissal of leave to defend application of the appellant has rightly decreed the Suit of respondent-bank vide impugned Judgment and Decree as envisaged under the provision of Section 10(11) of the Ordinance which provides the word 'forthwith' preceded by 'shall', which hardly leaves any discretion with the Court but to pass judgment and decree on the material that is available on record. Reliance in this regard can be placed on the cases of *Mrs. Jawahar Afzal v. Messrs United Bank Limited* [2003 CLD 119], *Messrs United Bank Limited through Authorized Attorney v. Banking Court No. II and 2 others* [2012 CLD 1556] and *Khurram Farooq v. Bank Al-Falah Limited and another* [2018 CLD 1417].

12. Learned Counsel for the appellant is unable to point out any illegality and irregularity in the impugned judgment and decree. Accordingly, the present appeal being devoid of any merit is dismissed with no order as to costs.

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