

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
1ST Civil Appeal No. D-17 of 2020

Before:

Mr. Khadim Hussain Tunio, J.
Mr. Ali Haider 'Ada', J.

Appellant: Yar Muhammad son of Ali Bag by caste Bozdar R/O H.No.-276, Street No. 07, Akhuwat Nagar Society, Airport road Sukkur.

Through M/s Ashok Kumar K.Jamba and Hamayoon Shaikh Advocates.

The Respondent: House Building Finance Corporation Limited, Branch Office Sukkur, through its Assistant Manager Law/Attorney Ali Raza Talpur.

Through Mr. Noor Ahmed Chadhar Advocate.

Date of hearing: 13.05.2025

Date of Announcement: 25.06.2025

J U D G M E N T.

Ali Haider 'Ada', J:- Through the instant appeal filed under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("Ordinance, 2001"), the appellant has impugned the judgment dated 02-03-2020 and the consequent decree dated 05-03-2020, passed by the learned Banking Court-II, Sukkur (the "Trial Court"), whereby Suit No.82 of 2019 instituted by the Respondent, House Building Finance Company Limited, was decreed against the appellant.

2. Brief facts of the case are that the Respondent instituted a suit for recovery under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, seeking an amount of Rs.2,159,640/- against the appellant. It was averred that the appellant applied for a finance facility on 14-10-2013, which was duly sanctioned by the respondent after completion of requisite formalities, for a sanctioned amount of Rs.1,500,000/- to be utilized for renovation of immovable property. Although part payments were made initially, the appellant subsequently defaulted in fulfilling the financial obligations, including the markup component, thereby

accruing outstanding liability as claimed by the respondent. Despite repeated demands, no effective repayment was made by the appellant. Consequently, the respondent was constrained to institute the suit for recovery of the said outstanding amount on 14-03-2019, duly supported by relevant loan documents, including a certified true copy of the statement of account.

3. After institution of the suit, learned counsel for the appellant entered appearance and filed vakalatnama on 20-08-2019. The matter was adjourned and on the subsequent date, i.e., 17-09-2019, counsel for the appellant remained present; however, the matter was again adjourned to 08-10-2019 due to the Presiding Officer being on circuit camp at Shaheed Benazirabad. On 08-10-2019, the counsel was again present, but the matter could not proceed due to the Presiding Officer's continued engagement in the circuit camp. The matter was then fixed for 05-11-2019. On that date, junior associates of the appellant's counsel appeared and the matter was further adjourned to 05-12-2019. On 05-12-2019, no application for leave to defend was filed by the appellant in accordance with Section 10 of the Ordinance, 2001. Consequently, the learned Banking Court deemed the service upon the appellant to be duly effected and proceeded to hear the suit ex parte. The respondent led its evidence by filing affidavit-in-evidence along with supporting documentation, which were duly exhibited. Thereafter, the learned Trial Court passed the impugned judgment dated 02-03-2020 and decreed the suit through decree dated 05-03-2020 in favour of the respondent.

4. Subsequent to the passing of the impugned judgment and decree, the appellant preferred the instant appeal before this Court challenging the legality and propriety thereof. During the course of appellate proceedings, the respondent filed its counter-affidavit on 16-12-2020, which was duly taken on record.

5. Learned counsel for the appellant contended that the impugned judgment is not sustainable in the eyes of law, as the suit filed by the respondent is barred under the provisions of Section 4 of the Bankers' Books Evidence Act as well as Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001. He argued that



the suit was decreed *ex parte* without affording the appellant a fair opportunity of being heard, which amounts to denial of due process. In support of his submissions, learned counsel placed reliance on (i) a circular pertaining to closure of civil working days, (ii) a copy of Section 9 of the Ordinance, 2001, (iii) Sections 2(8) and 4 of the Bankers' Books Evidence Act, (iv) judgment dated 15.11.2017 passed by this Court in 1st Civil Appeal No. D-05 of 2013, and (v) case law reported as 2021 CLD 130 and 2004 CLD 587.

6. On the other hand, no one appeared on behalf of the respondent at the time of hearing; however, their counter affidavit is already available on record and has been duly considered.

7. Heard the arguments advanced by learned counsel for the appellant and perused the material available on record, including the pleadings, annexed documents, counter-affidavit filed by the respondent and the impugned judgment and decree passed by the learned Banking Court.

8. Upon meticulous examination of the entire record and perusal of the appeal, it transpires that the impugned judgment was passed on 02-03-2020 and the decree was drawn on 05-03-2020. The instant appeal, however, was instituted on 14-04-2020. In terms of Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, an appeal must be filed within a statutory period of thirty (30) days from the date of the judgment or decree. Evidently, the instant appeal has been filed with a delay of nine (09) days beyond the statutory limitation.

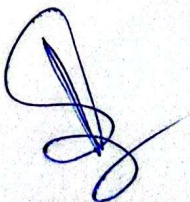
9. It is a settled principle of law that any delay in filing an appeal must be explained by showing sufficient cause; however, in the present case, the memorandum of appeal is absolutely silent with regard to the delay or the reasons thereof. No application seeking condonation of delay under the law has been filed.

10. Learned counsel for the appellant has placed reliance on the circular issued by this Court, dated 22-03-2020, whereby civil business was suspended due to COVID-19-related restrictions. However, this submission does not assist the appellant's case, as the

record reveals that the appeal was filed on 14-04-2020, during the subsistence of the said circulars, which clearly indicates that the appellant had access to the Court but still failed to file the appeal within the prescribed time. Furthermore, no averment or explanation has been made in the body of the appeal or otherwise justifying the delay on account of these circulars, nor has any formal application for condonation of delay been filed invoking COVID-related impediments.

11. It is a cardinal principle of law that when the statute prescribes a specific period for the performance of a legal act, such act must be performed strictly within the stipulated time and in the manner provided. Failure to adhere to statutory timelines without demonstrating sufficient cause renders the appeal incompetent and liable to be dismissed on the ground of limitation alone. Reliance in this regard is placed on the cases of ***M/s Sabir Traders Sole Proprietorship and another vs. National Bank of Pakistan (2023 CLD 247)*** and ***Mst. Najma Mansoor vs. M/s National Development Finance Corporation (2007 CLD 477)***.

12. So far as the computation of limitation is concerned on the premise that the period for filing the appeal would commence from the date when the appellant obtained the certified true copies of the judgment and decree, this contention is untenable in the facts and circumstances of the present case. The record manifests a different scenario, demonstrating that the appellant had full knowledge of the suit proceedings yet deliberately chose to remain absent at captious junctures. It is pertinent to note that the suit was instituted on 14-03-2019 and the counsel for the appellant first appeared before the learned trial Court on 20-08-2019. Despite being present, the appellant did not file any application under Section 10 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, seeking leave to defend the suit within the stipulated period. The Counsel for appellant continued to appear on subsequent dates but refrained from filing leave to defend. Eventually, on 05-12-2019, the learned trial Court passed an order holding that the appellant had failed to file an application for leave to defend and directed that the suit proceed ex parte against the appellant.



13. It is a fundamental principle that the appellant bears the onus to demonstrate sufficient cause and provide a cogent explanation for failing to file the requisite application for leave to defend within the prescribed period under Section 10 of the Ordinance, which mandates that leave to defend must be sought within thirty (30) days of service of the summons. In the instant case, the conduct of appellant, appearing irregular before the Court, deliberately refraining from filing leave to defend and subsequently opting to remain absent, exhibits a clear intent to play with the judicial process. Such conduct amounts to an abuse of Court procedure aimed at unduly prolonging the proceedings and discouraging the administration of justice. The Court is thus inclined to view the act of appellant in such prospect is deliberate, malafide and intended to create unnecessary hindrance in the expeditious disposal of the suit.

14. Accordingly, the plea that the limitation for filing appeal should be reckoned from the date of obtaining certified copies of the judgment and decree is not sustainable, given that the appellant was fully aware of the proceedings pending before the trial Court and chose to remain ex parte by his own volition.

15. Scrutiny of the record further reveals that the appellant applied for and obtained certified true copies of the judgment and decree on 04-04-2020, the same day on which copies were delivered to him by the learned trial Court. Nonetheless, the appeal was not filed immediately thereafter, but rather on 14-04-2020. This delay, too, remains unjustified and cannot be excused under the pretext of COVID-19 or any other circumstance.

16. It thus becomes manifest that the conduct of appellant is calculated to delay the proceedings, resorting to procedural stratagems to gain unfair advantage. The Court must be vigilant and cautious against such abuse of process, which impinges upon the rights of the respondent and adversely affects the sanctity of the judicial system. Reliance is placed on the precedents wherein similar conduct was disapproved and appeals were dismissed. As, ***Sikandar Hayat vs. Agricultural Development Bank of Pakistan through Manager (2005 CLD 870)***, ***Muhammad Ashruf vs. Habib Bank***



Limited (2005 CLD 1367), Shaukat Hussain vs. Habib Bank Limited (2005 CLD 1621), and Messrs World Clothing Company vs. Habib Bank Limited (2006 CLD 1590).

17. Further, the appellant contended that the suit is barred under the provisions of the Banker Books Evidence Act as well as the Financial Institutions (Recovery of Finances) Ordinance, 2001. However, a meticulous perusal of the entire record reveals that the respondent filed the statement of account in strict compliance with the procedural requirements prescribed by law. Additionally, all necessary documents were produced and exhibited in accordance with the statutory provisions and rules of evidence. The learned trial Court, in its judgment, has explicitly observed that certified documents, including the statement of account, were duly filed and considered.

18. It is noteworthy that despite having appeared through counsel before the trial Court and having more than ample opportunity to raise such objections, the appellant refrained from disputing the admissibility or correctness of these documents during the trial proceedings. The appellant merely made superficial appearances without challenging the foundational aspects of the case. The belated assertion of such objections at this appellate stage, therefore, amounts to a plea raised at a post-mature stage, which is neither tenable nor sustainable in law. The record does not demonstrate that these objections were ever put forth at the trial Court, thereby waiving the right to raise the same subsequently.

19 On merits, the appellant's attempt to contend that the suit should be remanded for a fresh trial on the ground that the proceedings were ex parte; and that specific documents are hit by the provisions of the Banker Books Evidence Act or the Ordinance, is devoid of substance and tantamount to an abuse of the judicial process. Such contentions lack factual and legal basis and an intention to delay the recovery proceedings. It is well-settled that the Financial Institutions (Recovery of Finances) Ordinance, 2001, was promulgated to facilitate the swift and summary recovery of outstanding financial dues by financial institutions and unnecessary



delays caused by raising technical or legal objections at an advanced stage are against the very spirit of the legislation.

20. The appellant's vague and generalized assertion that certain documents are inadmissible or barred under the Banker Books Evidence Act, without specifically identifying or substantiating the objectionable documents, cannot be entertained by this Court. A mere statement in pleadings, devoid of any evidentiary support, is insufficient to warrant interference with the findings of the trial Court.

21 The principle that the Appellate court should examine the case on its merits rather than remand it for retrial has been consistently upheld by the Superior Courts. Reliance is placed upon the authoritative decision of the Hon'ble Supreme Court in **Abdul Majid vs. Syed Muhammad Ali Shamim and 10 others** (2000 SCMR 1391), wherein the Court deprecated unnecessary remands which result in undue delay and protraction of litigation. The Supreme Court held that the High Court ought to decide the matter on merit rather than directing a retrial without sufficient cause.

22. Likewise, the dictum laid down in **Messrs Shah Nawaz Khan and Sons vs. Government of NWFP and others** (2015 SCMR 945) underscores the importance of avoiding procedural delays and discourages unnecessary remands that prolong litigation unnecessarily, thus undermining the efficiency of the judicial process.

23. In view of the foregoing, the plea of appellant for remand on the grounds mentioned above is rejected as misconceived and without merit. The objections raised at this juncture are construed as an attempt to derail the proceedings and cause undue delay, which is impermissible in the eyes of law.


24. After thorough consideration of the material on record and the submissions made, and having regard to the preceding discussion, this Court is satisfied that the judgment and decree of the learned Trial Court suffer from no legal flaw or procedural



irregularity. Consequently, this appeal, being devoid of merit, is hereby dismissed with no order as to costs.

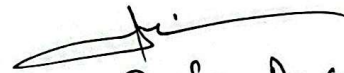


JUDGE




JUDGE

In open Court
Announced by us today
13. 25.06.2025



Justice Anjad
Ali BShid



Ali Haidar Ali