IN THE HIGH COURT OF SINDH, KARACHI
First Appeal No.43 of 2018
[Salman Capital Investments (Pvt.) Ltd. V. Habib Bank Limited]

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

Date of hearing:- 10.09.2025.

Mr. Muhammad Immad Qamar, advocate for Appellant.
Mr. Ijaz Ahmed Zahid, advocate for respondent.

J U D G M E N T

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MUHAMMAD IQBAL KALHORO J: In this appeal, a judgment dated 15.03.2018, passed by the Banking Court dismissing Suit No.245/2009, filed by appellant for recovery of damages of Rs.29,494,545/- with costs, under section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 for want of cause of action, has been challenged.

2. As per brief facts, plaintiff, the customer of respondent bank, availed a running finance facility from time to time. The last financial agreement was based on an offer letter dated 15.05.2007 with validity up to 30.04.2008. After which, the bank did not renew or extend the same despite request by the appellant. The appellant in order to secure the financing had pledged shares, detail of which is as under:-

SCRIPT	**QUANTITY**	**MARKET PRICE**	**MARKET VALUE**
ACCOUNT NO.38			
ABL	500	115.78	57,890
AHSL	500,000	183.83	91,915,000
AICL	30,000	371.15	11,134,500
BAFL	362,000	55.19	19,978,780
ENGRO	45,000	331.24	14,905,800
FABL	275,000	55.69	15,314,750
MCB	10,000	415.35	4,153,500
OGDC	100,000	134.25	13,425,000
TRIPF	20,000	253.32	5,066,400
ULEVER	7,000	2459.99	17,219,930
TOTAL			**193,171,550**

3. It was agreed that the bank would have discretion to dispose of these securities in case the market value of the shares/securities had fallen below the required margin of 50%, or when the appellant was unable to adjust the marginal requirements or to deposit the additional securities so as to make up for the short fall in the said securities. On account of economic meltdown, in the year 2008, the relevant authorities placed a floor in Karachi Stock Exchange w.e.f. 27.08.2008 to 15.12.2008. At that time, the plaintiff owed Rs.75.16 million to the bank, whereas, the value of the pledged collateral securities including third party shares was Rs.122.5 million. Afterwards, on lifting of floor, the bank vide notice dated 17.12.2008 required the appellant to top up the marginal requirements in respect of the pledged shares/securities.

4. It is alleged that the bank in breach and in disregard of its obligations and duties did not act as a prudent banker and kept sending notices to the appellant from time to time instead of selling off the pledged shares immediately to make up for the short fall. The value of the shares/securities in the meantime on daily basis kept shrinking due to volatile market conditions. Finally, the bank acting negligently and in mala fide manner sold off the pledged shares on 26.01.2009 and 27.01.2009 for an amount of Rs.35,568,015/- and adjusted proceeds thereof towards the outstanding dues.

5. The appellant vide letter dated 03.02.2009 requested the bank to provide the details of the sale of the pledged shares along with necessary KATS sheets and sale bill but to no avail. When the appellant raised the said issue in its application for leave to defend the suit filed by the bank against it for recovery of the outstanding amount, the bank in its replication filed certain documents containing such information. The appellant has further stated that disposing of the shares by the bank was outcome of mala fide, the bank acted negligently, did not liquidate the

shares timely and waited for more then one and half month of opening of the Karachi Stock Exchange. As a result, the value of the shares depleted resulting in loss to the appellant. The bank was authorized to dispose of the pledged shares without permission from the appellant, therefore, it was required to act in a diligent manner as a prudent banker. Had the bank disposed of the shares on 17.12.2008 when the first notice was issued, the borrowings availed by the appellant was Rs.75.16 million, while the value of the shares excluding third party shares was Rs.104.66 million, meaning thereby the value of the pledged shares was in excess of Rs.29.5 million. The bank's timely action could have saved the appellant from the loss of Rs.29.5 million. Hence, the suit for recovery of damages to the tune of Rs.29.5 million among others.

6. The bank after service, filed an application for leave to defend the suit but it was dismissed by the Banking Court on 28.07.2011 mainly on the ground that the suit could be decided on the basis of documents and there was no need to record evidence of the parties. However, the bank was allowed to submit breakup of outstanding amount against the appellant. Subsequently, however, the Banking Court raised the question of maintainability of the suit and invited the parties to assist it on the said point by submitting their respective arguments. After noting down the long arguments of the parties on the point, the Banking Court came to a conclusion that the appellant had no cause of action to file the suit which was not maintainable. Hence, the same was dismissed, and hence this appeal.

7. We have heard the learned counsel for the parties.

8. Learned counsel for appellant has argued that the impugned judgment is not sustainable; the learned Banking Court has not appreciated the fact that respondent bank did not act diligently and

prudently in disposing of the pledged shares timely which resulted in loss of Rs.29.5 million to the appellant; that the appellant was condemned unheard as it was not allowed to lead evidence; the Court did not consider that the application for leave to defend the suit filed by bank had already been dismissed which necessitated decision of the suit on merits.

9. His arguments have been rebutted by learned counsel for the bank stating that even appellant was competent to sell the shares pledged by it and/or make up for the loss in the margin but it did not, and subsequently in response to the notice had permitted the bank to sell the pledged shares vide letter dated 26.01.2009.

10. The impugned order shows that the arguments put up by counsel for the appellant here have been appreciated by the learned Judge of the Banking Court in detail in the context of section 176 of the Contract Act. The said provision stipulates a reasonable notice of the sale of pledged securities to be given to the pawnor. Learned Judge of the Banking Court has observed that the pledged shares were sold with permission of the appellant given to the bank vide letter dated 26.01.2009, wherein the appellant had shown its inability to either repay the finance facility or to pledge further shares in order to adjust the outstanding dues.

11. From the arguments, we have understood that the entire case of the appellant is based on a hypothesis that the bank did not act diligently in disposing of the pledged shares. That the bank was required to dispose of the shares immediately in the wake of loss in the marginal requirements without even giving a notice to the appellant. As in such eventuality, the appellant would have been saved from the loss of Rs.29.5 million.

12. Neither any detail nor any supporting documentary evidence has been furnished along with the plaint showing that the value of the pledged shares on a day of disposal was less than the value of the shares when the

appellant was given a notice to make up for the loss in the margin. So essentially, this statement that the shares were sold on less price, due to depletion of value, than the actual price prevalent on the day of notice is based merely on assumptions and presumptions, without there being any sold evidence to support it. So, irrespective of merit of the claim : whether the bank acted prudently or not, it is clear that the claim is founded on weak footings. This is regardless of the fact whether any such detail would have improved the case of the appellant on merits.

13. We are of a view that the bank in fact acted wisely in adhering to the principles of natural justice by serving a notice to the appellant to makeup for the short fall and then by reminding him repeatedly about it. The appellant, on the contrary, always indulged in delaying performance of obligation in the contract and giving its clear-cut response to the bank to sell off the pledged shares in order to compensate the short fall.

14. Learned counsel for appellant stated that in terms of agreement, the bank needed no permission from the appellant for selling off the pledged shares. Be that as it may, having an option to dispose of the pledged shares on its own without giving a notice to the appellant would not mean that bank was restrained from giving a notice to the appellant before proceeding to sell off the pledged shares, or giving notice meant that the bank acted mala fide. This option in the agreement i.e. to sell off the pledged shares/securities without a notice to pawnor has been given to the bank to meet exigent situation, when otherwise all efforts and opportunities given to the borrower for recovery of amount etc. bear no fruit and no option is left to the bank to recover the defaulted amount except by selling off the pledged securities. However, before exercising such drastic step i.e. selling off the pledged share, if the bank had thought to give a notice to the appellant and thereby afford it an opportunity to adjust the outstanding dues, it cannot be deemed to have acted

negligently or imprudently, and more so, out of mala fide, nor the same can be construed as a breach of the contract enabling the appellant to sue for damages.

15. On the contrary, we feel, the bank followed a normal recourse by giving notices to the appellant to top up the marginal requirement. The appellant in reply only kept on seeking time and ultimately gave permission to the bank to sell off the pledged securities.

16. At the time of giving such permission vide letter dated 26.01.2009, the appellant did not take a plea either that the bank had acted mala fide by giving it notices rather than disposing of the pledged securities on its own. Subsequently, taking a U-turn and stating that the act of the bank in disposing of the pledged shares was rooted in mala fide is nothing but an afterthought. From a reading of the letter dated 26.01.2009, permitting the bank to sell off the available securities, it is apparent that appellant was trying to arrange for further collateral to adjust the outstanding dues but when finally due to *force majeure* did not succeed, it allowed the bank to sell off the collateral available with it to recover outstanding dues.

17. Apart from that, the plea of the appellant that the act of the bank in giving notice to it instead of selling off the pledged shares is rooted in mala fide is without any substantial proof. Although, we are aware that it is very difficult to prove mala fide in a particular act which is taken lawfully and is permissible in law. Heavy burden lies on the one who claims so but at least in order to attract attention of the Court to lean in favour of continuation of the proceedings for recovery of damages on that ground, the appellant was required to come up with reasonable facts entailing an inquiry to justify life of such proceedings. In the present case, the entire claim of the appellant, as stated above, is based on

presumptions and assumptions without there being any evidence to support it. In the circumstances, continuation of the proceedings with the end result in failure would be nothing but an abuse of process of law.

18. Learned Judge of the Banking Court has rightly concluded that no cause of action had accrued to appellant to file the suit against the bank for recovery of damages, when availing of financial facility by it was admitted, its obligation to maintain the value of the pledged shares at 50% over and above outstanding liabilities was not disputed; failure of the appellant to make up for the loss was borne on the record; competency of the bank to sell off the pledged shares was not disputed; and the permission by the appellant to the bank to sell off the pledged shares was in blank and white through a letter which is a part of the record.

19. The Supreme Court in the case of *Abdul Majeed Khan V. Tawseen Abdul Haleem and others* (PLD 2012 SC 80) has elaborated that generally there are two types of damages: special damages and general damages. Defining the same, it has been held that:-

> The term general damages refer to the special character, condition or circumstances which accrue from immediate, direct, and approximate result of the wrong complained of. Similarly, the term special damages is defined as the actual but not necessarily the result of injury complained of. It follows as a natural and approximate consequence in a particular case, by reason of special circumstances or condition. It is settled that in an action for personal injuries, the general damages are governed by the rule of thumb whereas special damages are required to be specifically pleaded and proved. In the case of *British Transport Commission v. Gourley* [(1956) AC185] it has been held that special damages have to be specifically pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. The general damages are those which the law implies even if not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future. The basic principle so far as loss of earnings and out-

> of-pocket expenses are concerned is that the injured person should be placed in the same financial position, so far as can be done by an award of money, as he would have been had the accident not happened.

20. In the case of *Qazi Dost Muhammad V. Malik Dost Muhammad* (1997 CLC 546), it has been held that:-

> "It is settled principle of law that in respect of special damages it is the duty of an aggrieved person to prove each item of the loss, on the basis of evidence and as far as general damages are concerned, relating to mental torture, defamation etc. those are to be measured, following the 'Rule of Thumb', according to which, discretion rests with the Court to calculate such compensation keeping in view the attending circumstances of the case. As far as inconvenience is concerned, this item can be considered while assessing the general damages."

21. In the case of C.B. Singh V. Agra Cantonment (AIR 1974 Allhabad 147), it has been laid down that:-

> "The next question relates to the quantum of damages. The most important remedy which is available to victim of tort is award of damages. The conventional classification of damages is made under two head-- general and special. General damages are those which the law presumes to flow from the negligence complained of. These damages must be proved, but it is not necessary to allege them in detail in the statement of claim. Special damages mean some specific item of loss which the plaintiff alleges is the result of the defendant's negligence in the particular case, although it is not presumed by the law to flow from the negligence as a matter of course. Full particulars of all special damage must be given. The orthodox approach was to bring the various head of damage under one or the other of these two classes, but practice of the courts has demonstrated that these head often overlap and it is not always possible to maintain the distinction between them. Another classification which seems to have evolved in actions for personal injury is based on the distinction between damages which are capable of substantially exact pecuniary assessment. It thus includes any loss of earnings suffered by the plaintiff which accrued by the date of the trial. It also includes such other items as legal expenses, loss of pension rights, reduction prospects of marriage and even consequent inability to pursue one's hobby etc."

22. The above reproduction clearly indicates that generally there are two types of damages: special damages and general damages. General damages are defined as immediate, direct, and approximate result of the wrong complained of. The law presumes general damages to flow from the negligence complained of. These damages have to be proved but it is not necessary to allege them in detail in the pleadings. The general damages are governed by the rule of thumb whereas special damages are required to be specifically pleaded and proved. General damages are those which the law implies even if not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future.

23. Special damages are explained as actual but not necessarily the result of injury complained of. Special damages mean some specific item of loss which the plaintiff alleges is the result of the defendant's negligence in the particular case, although the law does not presume it to flow from the negligence as a matter of course. Special damage consists of out-of-pocket expenses and loss of earnings incurred down to the date of trial and are generally capable of substantially exact pecuniary assessment. The basic principle so far as loss of earnings and out-of-pocket expenses is concerned is that the injured person should be placed in the same financial position, so far as can be done by an award of money, as he would have been had the accident not happened. In simple words the damages are intended to put a person in the same position as he would have been in, had he not received the injury.

24. The above criteria setup by the superior Courts has not been qualified by the appellant and there is no chance that in absence thereof it would succeed. We, therefore, uphold the impugned judgment and dismiss the appeal along with pending application.

Above are the detailed reasons of our short order announced on 10.09.2025.

JUDGE

JUDGE

HANIF