IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

First Appeal No.56 of 1998
High Court Appeal No.221 of 2004

Appellants [in both Appeals]	:	Mst. Mohsina Saeed Tauni (Since deceased) W/o Muhammad Saeed Tauni through her legal heirs through Mr. Muhammad Nadeem Khan, Advocate
Respondents	:	Habib Bank Limited and others through Mr. Rajesh Kumar, Advocate representing Respondent No.1 Mr. Muhaymin Aizaz, Advocate representing Respondent No.6
Date of Hearing	:	02.09.2026
Date of Order	:	02.09.2026

J U D G M E N T

Amjad Ali Sahito, J-. By this common judgment, we intend to dispose of both the aforesaid appeals filed by the appellant, arising out of the same controversy. The First Appeal has been preferred against the order dated 11.05.1998, passed by the learned Banking Court No.II, Karachi, whereby her application under sub-section (5) of Section 6 of the Banking Tribunal Ordinance, 1984, seeking setting aside of the judgment dated 25.08.1996 and decree dated 24.09.1996 passed in Suit No.2034 of 1995, was dismissed principally on the ground of limitation. Whereas, the connected High Court Appeal has been filed against the judgment dated 06.05.2004, passed by this Court in Civil Suit No.428 of 1994, instituted by the appellant seeking declaration, cancellation of documents, damages and permanent injunction in respect of the same property, whereby the suit was decreed only to the extent that the General Power of Attorney purportedly executed by the appellant was declared forged and cancelled, while certain other issues relating to the alleged mortgage, Memo of Deposit of Title Deeds and the conduct of the Bank were decided against the appellant.

2. The controversy, in essence, revolves around the question whether the appellant could validly be proceeded against ex-parte and be made liable under the decree when, even prior to the passing of the said judgment and decree, she had approached the learned Banking Tribunal and specifically asserted that the finance transaction in question had been procured by fraudulent persons through impersonation, forged signatures and a purported General Power of Attorney which she had never executed; and further, whether such plea could be brushed aside merely on the ground of limitation when, subsequently, in independent civil proceedings instituted by the appellant, a competent Court declared the said General Power of Attorney to be forged and cancelled the same.

3. Briefly stated, Habib Bank Limited instituted Banking Suit No.2034 of 1995, subsequently renumbered as Suit No.412 of 1997, against M/s. Pak Shipping Company and others for recovery of an amount of Rs.11,502,346/- on account of finance facilities allegedly availed by the principal borrower. The Bank pleaded that finance facilities were sanctioned initially to the extent of Rs.5 million, subsequently enhanced to Rs.6 million and ultimately to Rs.9.80 million, against which the defendants failed to discharge their liability. Certain immovable properties were stated to have been mortgaged as security, while the present appellant was impleaded as one of the persons whose property had allegedly been offered as security.

4. The suit proceeded ex-parte against the defendants and was ultimately decreed by the learned Banking Tribunal on 25.08.1996. By the said judgment, recovery of Rs.8,045,714/- was decreed with future mark-up at the agreed rate, besides providing for sale of the mortgaged properties in case the decretal amount was not otherwise realized. The decree was signed/drawn on 24.09.1996.

5. The case of the appellant is, however, on a different footing. According to her, she was the lawful owner of property bearing Plot/Bungalow No.F-61, Block-B, K.D.A. Scheme No.2, North Nazimabad, Karachi, measuring approximately 2000 square yards. She claimed that the property had been acquired by her for valuable consideration and had subsequently been leased in her favour by the K.D.A. She maintained that she had never executed any General Power of Attorney in favour of Muhammad Asif or any other person authorizing the creation of a mortgage over her property.

6. The appellant, however, had, prior to the passing of the banking decree, become aware of attempts by certain persons to deal with her property. She stated that on 30.09.1990 she came to know through a newspaper publication that Muhammad Afzal Ahmed had entered into an agreement concerning her property. She consequently caused notices to be published and also lodged FIR No.396 of 1990. Thereafter, during the course of an FIA inquiry, she learnt that her property had allegedly been utilized for securing a banking facility by persons who had impersonated her and had used forged documents.

7. It is significant that the appellant further asserted that a purported General Power of Attorney had been prepared in favour of Muhammad Asif, allegedly bearing her signatures, and that a fictitious lady had been produced before the registration authorities as the appellant. She also maintained that her original lease deed had been obtained from the office of the Sub-Registrar without her authority. The matter was investigated by the FIA and FIR No.15 of 1994 was registered in relation to the alleged offences of impersonation, cheating and forgery. The appellant also referred to a handwriting/signature examination report obtained during the investigation, which, according to her, indicated that the questioned signatures were forged.

8. More importantly, the appellant had already instituted Civil Suit No.428 of 1994 before this Court seeking declaration, cancellation of the forged documents, damages and permanent injunction in respect of the same property. Thus, her challenge to the alleged fraudulent transaction was not raised for the first time after the banking decree. The challenge preceded the banking proceedings and remained pending before this Court.

9. The record further shows that the appellant appeared before the Banking Tribunal in person on 06.12.1995 and asserted that fraud had been committed upon her. Subsequently, an application under Section 151, C.P.C. was filed through learned counsel on 26.02.1996 seeking recall of the order whereby the matter had proceeded ex-parte. That application was dismissed on 14.05.1996. Thereafter, the banking suit was decreed ex-parte on 25.08.1996.

10. The appellant thereafter filed the application under sub-section (5) of Section 6 on 30.10.1996, seeking setting aside of the ex-parte judgment and decree. The learned Banking Court, however, dismissed the same through the impugned order dated 11.05.1998, holding that the application was hopelessly time-barred, as the decree had been passed on 25.08.1996 and signed on 24.09.1996, whereas the application was filed on 30.10.1996. The learned Court further observed that the appellant had failed to establish sufficient cause for the delay.

11. While arguing the First Appeal, learned counsel for the appellant has assailed the impugned order principally on the ground that the learned Banking Court failed to appreciate the peculiar facts of the case. It is contended that the appellant had never availed the finance facility, nor authorized any person to obtain the same on her behalf and had never voluntarily mortgaged her property. It is further submitted that her assertion of fraud was made even before the decree was passed and was supported by the criminal investigation as well as the civil proceedings instituted by her.

12. Learned counsel has further relied upon the judgment dated 06.05.2004 passed by this Court in Civil Suit No.428 of 1994. It is submitted that the said judgment conclusively established that the General Power of Attorney purportedly executed by the appellant was not genuine. According to learned counsel, once the competent Civil Court had declared the very document through which the alleged authority was created to be forged and cancelled, the banking decree could not have been mechanically maintained against the appellant without examining the legal consequences thereof.

13. Learned counsel for the appellant further contended that the appellant had already instituted Civil Suit No.428 of 1994 before this Court in respect of the same property, wherein Habib Bank Limited was arrayed as a party and was fully aware of the appellant's claim and objections concerning the property and the alleged fraudulent transaction. It was submitted that, despite such knowledge and while the said civil suit was pending, the Bank instituted the banking suit in the year 1995 and arrayed the appellant therein as defendant No.7. Shockingly, the Bank furnished an incorrect address of the appellant in the banking proceedings, showing her address as B-62, Block-2, Gulshan-e-Iqbal, Karachi, whereas in the civil suit already instituted by the appellant, her address was shown as F-61, Block-B, North Nazimabad, Karachi, being the very property in dispute. Learned counsel submitted that this circumstance assumes particular significance because the banking suit was thereafter proceeded with ex-parte against the appellant and the Bank, despite being a party to the earlier civil proceedings and having knowledge of the appellant's claim, could not legitimately have been unaware of her correct address.

14. Conversely, learned counsel for Respondent No.1/Bank supported the impugned order and submitted that the application under sub-section (5) of Section 6 of the Banking Tribunal Ordinance was filed beyond the prescribed period and that the appellant had failed to establish sufficient cause for the delay. It was contended that the decree dated 25.08.1996 had been passed after the appellant had failed to avail the remedy available to her within the prescribed period and, therefore, the learned Banking Court was justified in refusing to reopen the matter. Learned counsel further submitted that the Bank had advanced the finance facility against the documents and securities available on its record and that the subsequent judgment in Civil Suit No.428 of 1994 did not, by itself, extinguish the Bank's claim. However, when we confronted learned counsel with the proposition that, if ultimately it were found that the appellant had never availed the financial facility in question, nor authorized any person to obtain such facility on the basis of her property, whether it would meet the ends of justice to saddle her with the liability arising from a transaction from which she had allegedly derived no benefit merely because her plea was not entertained on the ground of limitation, learned counsel was unable to furnish any satisfactory answer to the said query.

15. Learned counsel for Respondent No.6, while supporting the impugned judgment, adopted the submissions made by learned counsel for the Bank. However, none has appeared on behalf of Respondents No.2, 3, 4, 5, 7 and 8. No intimation is received on their behalf. Since the matter pertains to the year 1998 and has remained pending for almost 27 years without any progress, therefore, we are proceeding with the matter in presence of the parties available before us.

16. We have heard learned counsel for the parties and have carefully examined the material available on record.

17. There can be no cavil with the proposition that proceedings before a Banking Court are governed by special statutory provisions and that the limitation prescribed for seeking setting aside of an ex-parte decree cannot ordinarily be ignored. The requirement of filing an application within the prescribed period is intended to secure finality and prevent a concluded decree from being reopened after an indefinite lapse of time. A litigant seeking condonation of delay is, therefore, required to disclose and establish sufficient cause.

18. However, the present matter cannot be examined solely on the basis of limitation. There is a peculiar and important sequence of events which distinguishes the case from an ordinary application filed by a defendant who remained completely inactive throughout the proceedings. The appellant had approached the Tribunal during the pendency of the banking suit and had specifically alleged that fraud and impersonation had been committed in relation to her property. The allegation, therefore, was not an afterthought invented after the decree. The appellant had already initiated proceedings concerning the same property and had also set the criminal law into motion. She appeared before the Banking Tribunal on 06.12.1995 and subsequently approached the Tribunal through counsel. Whatever may ultimately be the legal effect of those applications, the fact remains that the appellant was asserting, before the passing of the decree, that she had not authorized the transaction in question.

19. The learned Banking Court, while deciding the application under Section 6(5), principally concentrated upon the date of the decree, the date of its signing and the date of filing of the application. The impugned order does not, however, demonstrate that the earlier allegations of fraud made by the appellant, the pending Civil Suit No.428 of 1994, or the nature of the alleged fraudulent documents were examined in their proper perspective.

20. The significance of these circumstances becomes even greater in view of the subsequent judgment dated 06.05.2004 in Civil Suit No.428 of 1994. The said suit was instituted by the present appellant seeking declaration, cancellation of documents, damages and permanent injunction in relation to the very property which had been utilized as security in the banking transaction. In the said civil suit, this Court examined the purported General Power of Attorney allegedly executed by the appellant in favour of Muhammad Asif. The appellant categorically denied its execution. Defendant No.1, Muhammad Asif, did not enter the witness box to establish the genuineness of the document or to substantiate the alleged transaction. Upon consideration of the evidence, this Court held that the General Power of Attorney was bogus, fabricated and invalid and that it did not contain the genuine signatures of the appellant. Issues

Nos.1 and 4 were accordingly answered in the affirmative, and the General Power of Attorney was declared forged and cancelled.

21. The said finding is of considerable significance because the authority purportedly exercised by the person who allegedly dealt with the appellant's property was founded upon that very document. Once a competent Court, after recording evidence, has declared the General Power of Attorney to be forged and cancelled, the consequence of such finding upon the banking transaction involving the appellant's property necessarily requires judicial examination.

22. At the same time, we are mindful that the judgment dated 06.05.2004 cannot be read beyond its actual findings. The learned Civil Court did not declare every document connected with the banking transaction to be forged. In particular, while dealing with the Memo of Deposit of Title Deeds, the Court noted that the document had been produced by the Bank and that the plaintiff had not succeeded in establishing that the signatures appearing thereon were not genuine. Issue No.3 was consequently answered against the plaintiff. Likewise, the Court recorded an affirmative finding on the Bank's good faith under Issue No.6 and made observations regarding the appellant's failure to safeguard the title documents. Thus, the subsequent civil judgment does not, by itself and without further inquiry, nullify the entire finance transaction or conclusively determine the Bank's entitlement against every defendant. The findings concerning the forged General Power of Attorney, the alleged mortgage created pursuant thereto, the Memo of Deposit of Title Deeds and the Bank's conduct have to be read distinctly and in accordance with the precise findings recorded therein.

23. Nevertheless, the aforesaid distinction does not diminish the importance of the finding that the General Power of Attorney relied upon to establish the appellant's authority was forged. The Banking Court, while deciding the application under Section 6(5), did not have the benefit of this subsequent judgment nor the impugned order disclose a comprehensive adjudication of the appellant's contention that she herself had never authorized the transaction and that the person dealing with the Bank had acted upon an impersonated identity.

24. Thus, the case before us is not one where the appellant remained wholly inactive and, after allowing the proceedings to attain finality, attempted to reopen the matter on an entirely new plea. The record, as presently available, shows that she had already raised allegations of fraud and impersonation, had initiated civil and criminal proceedings concerning the same property, had appeared before the Banking Tribunal during the pendency of the banking suit and had asserted that she had never authorized the transaction. These circumstances, coupled with the subsequent finding regarding the General Power of Attorney and the discrepancy in the address furnished in the banking suit, required the appellant's grievance to be examined with due care.

25. It is a settled principle that procedural law is meant to advance justice and cannot be used to protect a transaction based on fraud. The law of limitation undoubtedly serves the important purpose of bringing finality to litigation; however, where the very foundation of a transaction is seriously questioned on the ground of fraud and forgery, the plea of limitation cannot, without examining the substance of such allegation, be permitted to conclusively determine the rights of a person who asserts that she never entered into the transaction at all.

26. Equally, allegations of fraud cannot themselves be treated as conclusive; they must be examined upon evidence. The Court is, therefore, required to strike a balance between the principle of finality of litigation and the equally important principle that a judgment or decree obtained through fraud cannot be permitted to stand merely because a procedural requirement has subsequently intervened. Reliance is placed in the case of ***Abdul Rehman and others vs. Ghulam Muhammad through L.Rs.***

and others (2010 SCMR 978), wherein the Hon'ble Supreme Court has held as under:

> *"8. In the instant case as discussed in paragraph 6 above, the Court having examined the evidence on record found that petitioner/defendants had failed to prove that Basharat Ali was a general attorney of the respondents/plaintiffs because neither the said alleged attorney was examined nor the attesting witnesses of the said document and even the document itself was not placed on record. The Court even went to the extent of holding that "the petitioner/defendants in order to protect their fraud have not intentionally produced general power of attorney". That being so, the transaction in question was a void transaction and the relevant Article would be Article 142 or 144 of the Limitation Act. The learned High Court has rightly decided the question of limitation."*

Reliance is also placed in the case of *Dr. Muhammad Javaid Shafi v. Syed Rashid Arshad and others* (PLD 2015 Supreme Court 212), wherein the Hon'ble Supreme Court has observed as under:

> *10. Granted, that law of limitation ensures order in the society but it cannot be used as a bulwark to perpetuate a gain having its origin in fraud which not only vitiates the most solemn transaction but the very fabric of the society. Entry of order invariably necessitates the ouster of fraud. Shielding a transaction based on fraud and forgery would be more chaotic and disorderly than undoing it. It is essentially in this context that this Court in the cases of "Abdul Majeed and 6 others v. Muhammad Subhan and 2 others", "Muhammad Akbar Shah v. Muhammad Yusuf Shah and others", "Mst. Hameeda Begum v. Mst. Murad Begum" and "Abdul Rehman and others v. Ghulam Muhammad through L.Rs and others" (supra) held that limitation cannot shield a transaction having no effect and existence on account of fraud and forgery. The respondent thus cannot be non-suited on account of his failure to institute a suit for declaration or for cancellation of documents within the time provided by the statute. I, therefore, don't think a case for interference with the impugned judgment is made out.*

27. As regards appellant's contention regarding the address furnished by the Bank in the banking suit; admittedly, prior to the institution of the banking suit, the appellant had already instituted Civil Suit No.428 of 1994 concerning the same property, wherein HBL itself was impleaded as a party. The address of the appellant in the said civil suit was shown as F-61, Block-B, KDA Scheme No.2, North Nazimabad, Karachi, which was also the property forming the subject matter of the dispute. Despite having been a party to the said proceedings and thus having knowledge of the appellant and the proceedings initiated by her in respect of the same property, HBL, in the subsequent banking suit, furnished the appellant's address as B-62, Block-2, Gulshan-e-Iqbal, Karachi. This discrepancy assumes considerable significance in the circumstances of the present case, particularly when the banking suit ultimately proceeded ex-parte against the appellant. Although we are not, at this stage, recording any conclusive finding regarding the validity or otherwise of service upon the appellant, the aforesaid circumstances certainly required closer examination by the learned Banking Court, especially in view of the appellant's prior proceedings against the Bank and her assertion that she had never authorized the transaction in question.

28. We are, however, not inclined to finally determine in these appellate proceedings the genuineness or otherwise of every document forming part of the banking transaction. The record itself indicates that there are several documents and competing factual assertions which require examination by the competent Court. In particular, the precise relationship between the forged General Power of Attorney, the alleged mortgage, the Memo of Deposit of Title Deeds and the finance facility advanced by the Bank requires determination.

29. In these circumstances, we are of the view that the appellant's plea cannot be rejected merely on the ground of limitation. The questions as to whether the appellant's claim concerning fraud, impersonation, forged authority and her prior participation in the proceedings could be conclusively rejected solely on the ground of limitation without examining the legal consequences of those circumstances require proper determination.

30. Finality of litigation is undoubtedly an important principle. However, finality cannot be invoked to protect a decree against a person whose liability itself is seriously disputed on the basis that the foundation of such liability was based upon a forged instrument. At the same time, an allegation of fraud cannot be accepted merely because it has been made. The proper course is to provide an opportunity for the controversy to be adjudicated upon the relevant material and in accordance with law.

31. For the foregoing reasons, we are of the considered view that the impugned order dated 11.05.1998 cannot be sustained. The peculiar circumstances of the case, particularly the appellant's prior assertion of fraud, her appearance before the Banking Tribunal during the pendency of the suit, the proceedings initiated by her before this Court and the subsequent declaration by a competent Court that the General Power of Attorney relied upon in relation to her property was forged, require that the appellant be afforded an effective opportunity to defend the claim on merits. The matter, in our considered view, ought not to be concluded against her merely on the technical ground of limitation when the very foundation of the liability attributed to her remains seriously disputed.

32. Consequently, the instant First Appeal is **allowed**. The impugned order dated 11.05.1998 passed by the learned Banking Court No.II, Karachi, is hereby **set aside**. The ex-parte judgment dated 25.08.1996 and decree dated 24.09.1996 passed in Banking Suit No.2034 of 1995, subsequently renumbered as Suit No.412 of 1997, shall also stand set aside to the extent of the present appellant/Mst. Mohsina Saeed. The appellant is hereby granted **unconditional leave to defend** the banking suit. She shall be entitled to file her written statement/defence and to contest the claim of the Bank on all questions of fact and law available to her, including the genuineness and legal effect of the alleged General Power of Attorney, the alleged mortgage/security documents, the Memo of Deposit of Title Deeds, the alleged signatures of the appellant, the validity of service upon her, the circumstances in which her property came to be shown as security for the finance facility and the effect of the judgment dated 06.05.2004 passed in Civil Suit No.428 of 1994.

33. The banking suit, insofar as it concerns the present appellant, is accordingly remanded to the learned Trial Court for decision afresh in accordance with law, after affording full and effective opportunity of hearing to both sides. The learned Trial Court shall consider the defence of the appellant on its merits and shall not non-suit her merely on the ground which formed the basis of the impugned order. The Bank shall likewise be afforded full opportunity to establish its claim and to meet the defence raised by the appellant. However, the learned Trial Court shall decide the matter **within a period of three months** from the date of receipt of this judgment, after hearing the parties and considering the material available on record.

34. It is clarified that this Court has not expressed any final opinion on the ultimate merits of the Bank's claim or the appellant's defence. The learned Trial Court shall decide the matter independently and strictly in accordance with law, without being influenced by any observation made herein except to the extent expressly directed above.

Adverting to the High Court Appeal No. 221 of 2004

35. We now advert to the connected High Court Appeal arising out of the judgment dated 06.05.2004 passed by this Court in Civil Suit No.428 of 1994.

36. Learned counsel for the appellant, at the outset, submits that in the impugned judgment, the learned Single Judge has decided Issues Nos.1 and 4 in favour of the appellant; however, while deciding Issues Nos.2, 3 and 6, it was observed that there was no prayer in respect of cancellation of the Memorandum of Deposit of Title Deeds and, as such, the said issues were not decided in favour of the appellant. Learned counsel for the appellant specifically invited our attention to Issue No.3, wherein it was framed as to whether the signatures of the plaintiff on the Memorandum of Deposit were not genuine and, if so, to what effect. Learned counsel for the appellant submits that these observations have come in the way of the appellant while pursuing the matter before the learned Trial Court. However, he submits that he would be satisfied and would not press the instant appeal if the learned Trial Court may be directed to decide the suit in accordance with law, without being influenced or prejudiced by such observations.

37. We have considered the submission of learned counsel and, in view of the nature of the controversy and the Judgment being passed in the connected First Appeal, we deem it appropriate that the appellant's suit be considered by the learned Trial Court in accordance with law, without the observations made while deciding Issues Nos.2, 3 and 6 being treated as conclusive against the appellant in the proceedings to be undertaken after passing this Judgment.

38. In view of the above, the instant High Court Appeal is **disposed of** with direction to the learned Trial Court to decide the aforesaid banking suit strictly in accordance with law, without being influenced by the observations made while deciding Issues Nos.2, 3 and 6, as mentioned above.

JUDGE

JUDGE

KAMRAN/PS