

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
R.A.No.11 of 1998.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For Regular hearing

Date of hearing: 25.08.2014.

Date of order: 15.09.2014.

Mr. Hidayatullah Abbasi Advocate for the Applicants.
None for the respondent.

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NAZAR AKBAR J:- This Civil Revision Application is directed against the Judgment and Decree passed by learned VIIth Additional District Judge Hyderabad whereby while dismissing Civil Appeal No.31 of 1994 filed by the applicants, the Judgment and Decree passed by learned Senior Civil Judge Tando Allahyar in F.C. Suit No.93/1990 filed by the respondent were maintained.

2. Brief facts leading to this Revision Application are that the respondent filed suit for settlement of accounts and permanent injunction claiming that the applicant/bank had advanced a loan of Rs.25,000/- to the respondent/plaintiff on 29.11.1980 for purchase of a Suzuki Pickup payable within three years. The respondent purchased a Suzuki Pickup which met with an accident on 14.08.1981. The respondent/plaintiff informed the applicant about the accident. The vehicle could not be repaired so that it could be plied despite the respondent incurred huge amount over it, therefore, the respondent could not pay the installments of the loan. The Respondent requested the applicant/bank not to charge the compound interest. The respondent by that time has already paid principal amount of Rs.25000/-. He was, however, informed that outstanding amount has risen to Rs.37,312/- upto 31.03.1990 and lastly to Rs.38,389/- and notices were issued to

the respondent for depositing such amount. The respondent, therefore, filed suit for settlement of account and permanent injunction before the learned trial court.

3. The Regional Manager / defendant No.1 contested the suit and filed their written statement and denied the assertions made in the plaint. It was pleaded that the respondent/plaintiff did not use the borrowed amount for the purpose for which he had obtained the same but he has misappropriated it. The respondent/plaintiff is liable to pay the amount charged by the applicant/ defendant.

4. Learned trial court framed 9 issues out of the pleadings of the parties, which included three issues of law i.e. maintainability, barred by law and jurisdiction of civil Court. The trial Court after recording evidence and hearing parties decreed the suit and the applicants /defendants challenged the said Judgment and Decree before the appellate court in Civil Appeal No. 31 of 1994 but same was also dismissed by the impugn order.

5. I have heard learned counsel for the applicants and perused the record. The respondent is exparte since despite service through publication, he is not in attendance.

6. The main contention of the counsel for applicant is that the suit against the applicant being a banking company was not maintainable and yet the trial Court and the appellate Court have passed the judgment and decree without appreciating that the judgment and decree of trial Court were coram-non-judice. The perusal of plaint reveals that the plaintiff himself has admitted in para-2 of the plaint that he has obtained loan from the applicant. The loan was obtained on 29.11.1980 through a loan Account No.8224. The correspondence referred to in the plaint indicates that the loan was on interest basis. The suit was filed by the respondent after 10 years of obtaining loan and correspondence between the applicant and the respondent on the issue of recovery of loan as the respondent could not get fruitful

result and ultimately notices were sent to the respondent under section 81 of Sindh Land Revenue Act, 1967 for the recovery of outstanding amount of loan. Learned counsel contends that on the date of filing of the suit i.e. 10.10.1990 as well as in 1980 when loan was advanced by the applicant to the respondent, the applicant was banking company and the respondent was a customer of the bank. These facts were spelt out from the plaint itself and yet learned trial Court decreed the suit of the respondent and restrained the applicant from recovery of loan despite clear bar of jurisdiction of civil Court.

7. The other contention of the counsel for applicant is that the refusal to entertain the appeal by the appellate Court was also erroneously since a notification showing the authority of the person through whom the appeal had been filed was placed on record, but the learned appellate Court ignored it. Learned counsel for the applicant further contended that the trial court has failed to appreciate that the respondent has not produced any document in support of his contention raised in the plaint. The basic document i.e. registration book of the Suzuki claimed to have met an accident was not produced by the respondent/plaintiff. He has not even produced the purchase receipt of the vehicle so that it could be presumed that the respondent has purchased the Suzuki in November, 1980. He could have got the same insured before it met with an accident after almost 10 months on 14.08.1981. The respondent has not placed on record even insurance document. All this has proved that the burden was on the plaintiff which he has failed to discharge.

8. I have carefully examined the documents and the law referred by the counsel for the applicant in his arguments. It is quite obvious that the relationship between the parties was that of a Bank and a borrower and the Civil Courts had no jurisdiction to entertain the suit for settlement of loan account raised by the borrower against the Bank, therefore, law referred by the learned counsel for the

applicant squarely covers the case of the applicant. The Civil Court had no jurisdiction to entertain the suit and plaint should have been rejected U/O 7 Rule 11 CPC for want of jurisdiction, as barred under section 6 (1) (a) and sub section (4) of the Banking Companies (Recovery of Loans) Ordinance, 1979, which reads as follows:-

6. Powers of Special Court. (1) A Special Court shall

(a) in the exercise of its civil jurisdiction, have, in respect of a claim filed by a banking company against a borrower or by a borrower against a banking company in respect of, or arising out of, a loan all the powers vested in a civil Court under the Code of Civil Procedure, 1908 (Act V of 1908).

(b) -----

(c)-----

(2)-----

(a)-----

(b)-----

(c)-----

(3)-----

(4) No Court other than Special Court shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of a Special Court extends under this Ordinance, including a decision as to the existence or otherwise of a loan and the execution of a decree passed by a Special Court; and all proceedings, including proceedings following the filing of an arbitration award and proceedings for the execution of a decree within the jurisdiction of a Special Court, by whatever Court passed, which may be pending in any Court immediately before the commencing day shall stand transferred to the Special Court.

9. In the year 1990, when the suit was filed, banking companies (Recovery of Loans) Ordinance 1979 was applicable and during pendency of appeal the said ordinance was replaced by the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 and subsequently this Act of 1997 was repealed by another Ordinance No.XLVI of 2001 called Financial Institution (Recovery of Finance) Ordinance, 2001 thus throughout the jurisdiction of civil Courts remained barred. The similar provision ousting the jurisdiction of civil Court continued to appear in each enactment dealing with issues between the bank/applicant and the borrower/respondent. In the last mentioned Ordinance of

2001 the bar of jurisdiction of civil Court is contained in section 7(4) of the ordinance:-

(4) "Subject to sub section (5), no Court other than a Banking Court shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of a Banking Court extends under this Ordinance, including a decision as to existence or otherwise of a finance and execution of decree passed by a Banking Court."

10. On the question of dismissal of appeal on the ground that the same was not filed by a competent person, merely on the ground that resolution of the Board was not filed alongwith memo of appeal was a perverse finding in view of the fact that a Gazette notification was placed on record, whereby the person who had filed the appeal had been declared as authorized person to initiate legal proceedings. In the instant case, it was not only that he was a competent person by virtue of notification rather he was himself a party since he was directly sued by the respondent, therefore, if the suit filed against the defendant was competent then the appeal preferred by judgment debtor/defendant with same description cannot be dismissed on the ground that it was not filed by a competent person. The findings of the trial Court that the burden was on the applicant to establish that the respondent has not purchased the Suzuki Pickup after receiving the loan amount, was also misplaced. It was the claim of the respondent /plaintiff that he had purchased the Suzuki which met with an accident, therefore, burden was upon the respondent /plaintiff to prove through positive evidence that there was a Suzuki Pickup and there was an accident but neither registration document of the Suzuki was placed on record before the trial Court nor any F.I.R. of alleged accident was placed on record and thus the entire case of the respondent was baseless and no evidence in support of claim was placed before the trial Court, therefore, even on merits the suit ought to have been dismissed.

11. The upshot of the above discussion is that this Revision Application is allowed and the Judgment and Decree of courts below are set-aside. Consequently suit filed by the applicant is dismissed with no order as to costs.

JUDGE.

A.K.