

IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A No. 259 of 2014

Present:-

Mr. Justice Syed Sajjad Ali Shah.

Mr. Justice Muhammad Junaid Ghaffar.

First Women Bank Ltd. ----- Appellant

Versus

Hakim Sons Overseas Trading

(Pvt.) Ltd. & others ----- Respondents

Date of hearing: 07.10.2015.

Date of judgment: 20.10.2015

Appellants: Through Mr. S. M. Kazim Advocate.

Respondent No.1 & 2: Through Mr. Muhammad Farooq Advocate.

J U D G M E N T

Muhammad Junaid Ghaffar, J. Through instant appeal, the appellant has impugned order dated 10.9.2013 passed by a learned Single Judge of this Court in Suit No. 1652 of 2009, whereby, the application filed under Order VII Rule 11 CPC seeking rejection of plaint has been dismissed.

2. Precisely the facts as stated are that the respondent No. 1 & 2 (“Respondents”) filed a Suit for Recovery and Damages against the appellants and others, by alleging that due to connivance of the appellants and its officers, respondent No. 4 (an employee of respondents) had managed to open a Bank account with the Sukkur Branch of the appellant, by forging signatures and misrepresenting the name of respondents, and misappropriated money by encashment of various cheques issued in the name of respondents. The appellants though filed written statement in the aforesaid Suit, however, also filed an application under Order VII Rule 11 CPC on the ground that the cause of action as disclosed in the plaint had accrued to the respondents

on 18.11.2004, whereas, the Suit was filed on 5.11.2009, therefore, the same being barred by limitation, renders the plaint liable to be rejected.

3. Counsel for the appellants has contended that admittedly in Para 8 of the plaint, the respondents disclosed that the cause of action had accrued in November 2004, whereafter, correspondence was exchanged between the parties and the respondents approached State Bank of Pakistan with a complaint which was dismissed on 24.2.2005. Counsel has further contended that after dismissal of complaint by the State Bank of Pakistan, the respondents abandoned their claim, when suddenly on 31.3.2008, a notice under Section 82-D(2) of the Banking Companies Ordinance, 1962, was issued to the appellants and thereafter the appellants approached the Banking Mohtasib and after dismissal of their complaint by the Banking Mohtasib and disposal of appeal by the Governor of State Bank, Suit was filed on 15.11.2009, which is hopelessly barred by time, and therefore, the plaint should have been rejected by the learned Single Judge.

4. Conversely, Counsel for respondents has contended that though on 18.11.2004, it came to the knowledge of the respondents that some account in their name has been fraudulently opened by respondent No. 4, in connivance with the appellants, whereafter they wrote several letters to the appellants including the State Bank of Pakistan requesting them for furnishing the details of the account opening form and other related information. However, such requests were not entertained compelling the respondents to approach State Bank who also dismissed their complaint on 22.4.2005 and thereafter a Notice dated 31.3.2008 under Section 82-D(2) of the Banking Companies Ordinance, 1962, was issued and since till then, no information was provided, therefore, no legal proceedings were undertaken by the respondents. Per Counsel such information was only provided to the respondents after directions were issued by the Governor of State Bank, while hearing appeal against dismissal of complaint by the Banking Mohtasib, on 15.4.2009, whereafter the respondents have filed Suit for recovery. Per Counsel the Suit is within time as the period of limitation was extended because of exchange of correspondence and the directions of Governor State Bank of Pakistan as referred to hereinabove.

5. We have heard the Counsel for the contesting parties and have perused the record. By consent instant appeal is being finally disposed of at Katcha peshi stage. Perusal of the record reflects that there is no denial that on 18.11.2004, it came to the knowledge of the respondents that some fraud has been committed after which they engaged in correspondence with the appellants seeking information in respect of opening of the account by their employee, respondent No. 4, and misuse of cheques issued in their name by their Customers. Such correspondence continued but did not bear any fruit insofar as the respondents are concerned. Subsequently, the respondents approached the State Bank of Pakistan with a complaint which was dismissed on 24.2.2005. From 24.2.2005 till 31.3.2008 admittedly the respondents neither initiated any action nor resorted to any legal proceedings for recovery of the said amount. We had repeatedly asked the Counsel for the respondents to show us any letter and or correspondence, whereby, it could be shown that in this intervening period of more than three years, any effort was made by them so as to examine that whether the cause was continuing in nature or not. It is only on or after 31.3.2008, that any further effort was made by the respondents when a notice was issued to the appellant under Section 82-D(2) of the Banking Companies Ordinance, 1962 after which a complaint was filed before the Banking Mohtasib which was also dismissed, against which an appeal was filed which was disposed of by order dated 15.4.2009 by the Governor State Bank of Pakistan. A minute examination of facts as stated in the plaint and the documents annexed, it clearly reflects that insofar as the intervening period from 24.2.2005 to 31.3.2008, is concerned the respondents had abandoned their claim for want of particular information.

6. Though it is a settled proposition that a plaint can only be rejected under Order VII Rule 11 CPC, on the basis of admitted facts and or material which has been disclosed in the plaint, and the contents of written statement cannot be considered for deciding such question with regard to limitation, however, it is also a duty of the Court to see and examine as to whether on such disclosure of facts, a Suit is within time or not. The Court is always duty bound to see that whether the Suit which has been filed before it, is barred by any law or not. If a specific objection is taken through an application under Order 7 Rule 11 CPC, or otherwise, the Court is bound to examine the plaint and reject it

forthwith, if it appears from the statement made therein, to be barred by any law. The Court is duty bound by the use of the mandatory word "Shall" to reject the plaint if it "appears" from the statement in the plaint to be barred by any law. Reliance in this regard may be placed on the case of **Haji Abdul Karim Versus Messers Florida Builders (Pvt) Limited (PLD 2012 SC 247)**. In the instant matter despite several opportunities to the Counsel for respondents, our query with regard to the gap of more than three years between 24.2.2005 and 31.3.2008, neither could be satisfactorily responded nor a plausible explanation was tendered. The only ground which has been urged upon on behalf of the respondents is, that since they had no particular information with regard to the details of the accounts and the money embezzled by respondent No.4, allegedly in connivance with the appellants, therefore, they could not have filed any Suit for Recovery and it is only after the directions of Governor State Bank of Pakistan dated 15.4.2009, that limitation would start running, when for the first time the appellants agreed to furnish requisite information. We are afraid such contention does not appear to be correct nor is supported with any law. By no stretch of imagination, limitation can be extended in such manner, as it was incumbent upon the respondents to have persuaded their remedy after rejection of complaint by State Bank on 24.2.2005, whereas, for the sake of repetition we may say, no plausible explanation has been put forth that as to why from 24.2.2005 till 31.3.2008 no efforts were made by the respondents in this regard. This leads us to the conclusion that admittedly the time provided in law for instituting a Suit for Recovery, which is three years under Article 62 of the First Schedule to the Limitation Act had expired, and this Court must take cognizance of such legal defect on the basis of material placed before it. The cause of action admittedly accrued on 28.11.2004, and, even assuming for the sake of arguments that it continued and limitation stood extended up to 22.4.2005, when complaint was initially rejected by State Bank, even then the 3 years provided expired on 24.2.2008, whereas, the Suit has been filed on 5.11.2009, hence, hopelessly time barred.

7. In view of hereinabove facts and circumstances, we are of the view that the learned Single Judge had misdirected himself while dismissing the application under Order VII Rule 11 CPC, as prima facie it appears that the Suit on the basis of disclosure of cause of action in the plaint itself, was filed beyond the mandatory period of three years as provided

under Article 62 of the First Schedule to the Limitation Act, and therefore, the plaint ought to have been rejected.

8. Accordingly, instant appeal is allowed by granting the application under Order VII Rule 11 CPC and the plaint in Suit No. 1652 of 2009 hereby stands rejected. Appeal allowed.

JUDGE

JUDGE

ABSHAD/