

Civil Revision No.207 of 2004

ASGHAR KHAN VERSUS NATIONAL BANK OF PAKISTAN etc.

15.10.2010 Mr. G. Haider Alghazali Advocate for Petitioner.
Muhammad Qamar-uz-Zaman Advocate for
Respondents

The petitioner instituted a suit for declaration and permanent injunction against the respondents that he was employed as a peon/Naib Qasid and on a false allegation of embezzlement he was got arrested at the instance of the respondent-Bank. During his arrest, he was made to make a deposit of Rs.24,81,298 (rupees twenty four lac, eighty one thousand, two hundred and ninety eight only) with the respondent-Bank. The criminal investigation as per contents of the plaint ended in a finding in favour of the petitioner to the effect that he has nothing to do with maintaining records of the National Bank of Pakistan, Sohawala Branch, tehsil Daska, district Sialkot, which was the responsibility of the defendants/respondents of the suit. The petitioner contended that the alleged amount in question has been obtained from the petitioner through coercion and fraud, which he deposited with the respondent/ Bank after procuring the same from his relatives. After the dismissal of the criminal investigation i.e. F.I.R. No. 334, dated 24-11-1996, in the abovementioned manner, he instituted a suit before the learned Civil Judge for declaration and permanent injunction on 29-1-2000 with the prayer that he is the owner of the amount deposited.

2. The respondents/ defendants contested the suit; submitted written-statement. However, admitted the fact that the petitioner was arrested in an F.I.R. lodged and his relatives deposited an amount of Rs.24,81,298 (rupees twenty four lac, eighty one thousand, two hundred and ninety eight only) with the Bank as is stated in para-9 of the written statement.

3. The learned Civil Judge before whom the suit was pending, which hearing the interim injunction matter not only dismissed the application for the grant of temporary injunction but rejected the plaint of the suit vide order dated 5-6-2000.

4. This order dated 5-6-2000 was assailed through an appeal preferred by the petitioner before the learned Additional District Judge, Daska, which appeal was also dismissed vide judgment dated 16-10-2003. Hence, this civil revision.

5. It is contended by the learned counsel for the petitioner that at the time of disposal of the interim matter i.e. an application for the grant or refusal of temporary injunction, the main suit cannot be disposed of. It is further contended that the plaint contains serious allegations against the respondent-Bank and for the purpose of rejecting the plaint, the contents of the plaint shall be deemed to have been accepted as correct and if by adopting the said course, the

plaint does not disclose cause of action, it is only then the plaint can be rejected. None of the courts below have recorded a finding that after accepting the contents of the plaint as correct, the plaint does not disclose cause of action. The learned counsel has contended that the rejection of the plaint by the courts below is therefore liable to be set aside as the matter requires decision on merits after recording the evidence of the parties.

6. The learned counsel for the respondent-Bank has contested this civil revision and submits that the suit for declaration is not maintainable as the consequential relief of recovery of the amount in question has not been prayed for, therefore, the rejection of the plaint by the two courts below is in accordance with law.

7. I have considered the arguments of the learned counsel for the parties and have perused the record.

8. Admittedly, the petitioner was arrested on the allegation of embezzlement of the said amount under an F.I.R. lodged by the respondent-Bank and the relatives of the petitioner were made to deposit the amount in question with the respondent-Bank, which criminal investigation is not denied to have been closed and dismissed on the grounds that the plaintiff had nothing to do with the alleged embezzlement and the depositing of Rs.24,81,298 (rupees twenty four lac, eighty one thousand, two hundred and ninety eight only) is

also admitted by the Bank in paragraph No.9 of the written-statement, but the plea has been taken that this deposit was made by the legal heirs with their free consent without any objection. Both the learned courts below did not look into these facts and rejected the plaint. None of them record a finding that after accepting the contents of the plaint and keeping in view the written-statement no cause of action is made out. Merely because a consequential relief for the recovery of the amount in question has not been prayed for, does not render the plaint liable to be rejected as the prayer of consequential relief can be added to the plaint through amendment application at any stage of the proceedings.

9. The order passed by the learned Civil Judge of rejecting the plaint at the stage of dismissing the ad interim injunction application is patently illegal and is set aside and the judgment of the learned Additional District Judge confirming the order of the learned Civil Judge is also illegal and is set aside. The civil suit instituted by the petitioner shall be deemed to be pending. The learned Civil Judge shall frame the issues and allow the parties to produce their respective evidence. The petitioner may also move an application for the amendment of the plaint for adding further consequential relief, which may be available to him in view of the peculiar circumstances of the instant case. The respondents shall be at liberty to raise any legal or other objections in the written-statement, in case the learned trial Court allows the amendment of the plaint through any application moved by

the petitioner. The suit shall be decided on merits by the learned Civil Judge expeditiously as far as possible within a period of six months since it's a matter pertaining to the year, 2004.

10. In view of the above, the instant civil revision stands accepted with no orders as to costs.

(NASIR SAEED SHEIK)
Judge