

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, BAHAWALPUR
BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT**

FAO No.117 of 2014/BWP.

United Bank Limited

Versus

**M/s Hassan Muhammad Cotton Industries &
Oil Mills & others**

J U D G M E N T

Date of hearing: 24.01.2017.

Appellant by: Mr. Muhammad Basit Babar Chughtai,
Advocate.

Respondents by: Mr. Muhammad Bilal Bhatti, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J.- Through instant appeal, order dated 18.09.2014 passed by learned Judge Banking Court, Bahawalpur, has been assailed, whereby plaint of the suit filed by appellant-bank was returned under Order VII Rule 10 C.P.C.

2. Brief facts of the case are that appellant-bank filed a suit, under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (*FIO, 2001*) for recovery of Rs.7,521,320.22 against respondents, which was contested by respondents No.1 & 2 by filing application for leave to defend the suit whereas respondents No.3 & 4 were proceeded against ex-parte owing to their non-appearance. Learned Judge Banking Court, Bahawalpur, after hearing the arguments of learned counsel for parties, proceeded to pass the impugned order, whereby plaint was returned by invoking provisions of Order VII Rule 10 C.P.C.,

vide order dated 18.09.2014. Through instant appeal, said order has been assailed.

3. Learned counsel for appellant-bank submits that plaint of the suit disclosed cause of action within the contemplation of law, and learned Judge Banking Court has wrongly invoked provisions of Order VII Rule 10 C.P.C. He adds that learned Judge was obliged under the law, first to decide application for leave to defend the suit, as plaint could not be rejected / returned without deciding said application.

4. On the other hand, learned counsel for respondents No.2 & 4 defends the impugned order and submits that appellant has failed to point out any illegality or legal infirmity in the impugned order.

5. Arguments heard. Record perused.

6. The operative part of impugned order is reproduced hereunder:-

“3. On these observations that despite the fact that all the defendants in their respective leaves to defend and even this Court had gone as far as to appoint a commission on 26.11.2013, the mandatory documents as per Section (2) and (3) have not been complied with. For ready reference, Section 9(2)&(3) is noted as following:-

(2) The plaint shall be supported by a statement of account which in the case of a financial institution shall be duly certified under the Bankers Books Evidence Act, 1891 (XVII of 1891), and all other relevant documents relating to the grant of finance. Copies of the plaint, statement of account and other relevant documents shall be filed with the Banking Court in sufficient numbers so that there is one set of copies for each defendant and one extra copy.

(3) The plaint, in the case of a suit for recovery instituted by a financial institution, shall specifically state ----

(a) the amount of finance availed by the defendant from the financial institution;

(b) the amount paid by the defendant to the financial institution and the dates of payment; and

(c) the amount of finance and other amounts relating to the finance payable by the defendant to the financial institution up to the date of institution of the suit.

4. As, presently, the Court observes that there is violation of the aforesaid provisions and despite separate opportunities had been granted to the bank in order to provide the sanction advice upon which the loan is disbursed and the agreement is made between the parties having not been filed or complied with, the bank has miserably failed. Besides, this point has already been initiated and has been the stance of the defendants in their leave to defend. Sanction advice is the most vital document on the basis of which a suit for recovery can be filed under the FIO 2001, which becomes and endorses the actual cause of action against the loanee, by the bank. In the case at hand there does exist ambiguity as to the cause of action, which needs to be clarified, as per law. Accordingly, this Court come to the conclusion that although the loan is admitted but when and how the cause of action arose is not supported by a vital document that is "sanction advice", which is in direct violation of the provisions of Section 9 of FIO, 2001.

5. In view of this matter, as the Court has already observed the above noted facts, concludes that the objections raised in the leaves to defend are genuine enough, therefore, these applications are disposed of in the manner that the plaint being defective due to ambiguity in the cause of action is returned under Order 7, rule 10."

7. The above reproduced part of the impugned order shows that learned Judge Banking Court proceeded to return the plaint by observing that provisions of sub-sections (2) & (3) of Section 9 of FIO, 2001, were not complied with, sanction advice was not produced and there was ambiguity as to cause of action. Application for leave to defend was disposed of in terms of returning the plaint by invoking provisions of Order VII Rule 10 C.P.C.

8. It would be useful to go through relevant provisions of the Code of Civil Procedure, 1908 (C.P.C.), dealing with return/rejection of a plaint. Under Order VII Rule 10 C.P.C., plaint

can be returned at any stage of the suit, to be presented to the Court having jurisdiction and Order VII Rule 11 C.P.C. provides that plaintiff can be rejected on the grounds: lack of cause of action, under-valuation, insufficient court fees and barred by law. These provisions are reproduced hereunder:-

Order VII Rule 10 C.P.C.

“10. Return of plaint. -- (1) The plaint shall at any stage of the suit be returned to be presented to the court in which the suit should have been instituted.

Procedure on returning plaint. -- (2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.”

Order VII Rule 11 C.P.C.

“11. Rejection of plaint. -- The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law.”

9. Section 10 of the FIO, 2001, provides the procedure to deal with application for leave to defend the suit. Banking Court had to determine, in the first instance, whether or not the defendant should be granted leave to defend the suit. The Banking Court is obliged to answer all the questions raised in the leave application and if proceeds to accept the same, shall frame issues as to substantial questions of law or fact, invite evidence and only then, dispose of either the suit or the leave application. Banking Court,

therefore, could not have disposed of the suit vide impugned order as it had to exercise jurisdiction strictly in accordance with the FIO, 2001. Even disposal of application for leave to defend is completely alien and contrary to spirit and provision of FIO, 2001. The said application has to be either rejected or allowed by the Banking Court, not to be disposed of in the manner as has been done through the impugned order. Learned Banking Court did not adopt the procedure as prescribed in the statute and had gone outside the scope of Section 10 (8) & (10) of the FIO, 2001. Reference can be made to Habib Bank v. Messrs Qayyum Spinning Ltd. (2001 MLD 1351) and Umer Shariq v. Messrs SME Bank Limited (2016 CLD 1821). Under the law, no one could be left without remedy and if a wrong had been committed with him and he was in search of some redress against such wrong, there must be some forum available to entertain his claim and to adjudicate upon proceedings instituted by such person. After return of plaint from Banking court, it has not been suggested as to which Court has jurisdiction to entertain the suit, in violation of the afore-referred provisions of law. Reliance is placed upon Haji Muhammad Nawaz Khokhar v. United Bank Limited through President and 3 others (2012 CLD 1709).

10. The FIO, 2001 is a special law and provides procedure to deal with banking suits. Section 4 of the FIO, 2001 lays down that provisions of the Ordinance *ibid* will override all other laws and require strict consequences within the contemplation of said Ordinance. Reference is made to Apollo Textile Mills Ltd. and others v. Soneri Bank Ltd. (PLD 2012 Supreme Court 268 = 2012 CLD 337). Section 9 of the FIO, 2001, provides remedy in shape of institution of suit before the Banking Court by a customer or a financial institution, if there is any default in fulfillment of any obligation from either side. For facility of reference, said provision of law is reproduced hereunder:-

“9. Procedure of Banking Courts. (1) Where a customer or a financial institution commits a default in fulfillment of any obligation with regard to any finance, the financial institution or, as the case may be, the customer, may institute a suit in the Banking Court by presenting a plaint which shall be verified on oath, in the case of a financial institution by the Branch Manager or such other officer of the financial institution as may be duly authorized in this behalf by power of attorney or otherwise.”

The above provision of law details certain requisite preconditions for the exercise of jurisdiction of Banking Court viz-a-viz, the plaintiff should be either financial institution or the customer, cause of action or default in fulfillment of any obligation and such obligation must be with regard to a finance. Reference is made to Majeed A. Tahir v. United Bank Limited through President and 3 others (2008 CLD 1162).

11. Jurisdiction of any Court with regard to any matter to which the jurisdiction of Banking Court extends including a decision as to the existence or otherwise of a matter of finance, is excluded under the proviso of Section 7 (4) of the FIO, 2001. The said provision of law runs as under:-

“7. Powers of Banking Courts.

(1)

(2)

(3)

(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 the existence or otherwise of a finance and the execution of a decree passed by a Banking Court.”

12. The findings of learned Judge Banking Court that sanction advice is a vital document for showing cause of action, are perverse and absolutely illegal. It is well-settled that sanction advice is an internal document of the bank, which could be seen only to know what was approved by the bank. Agreement

overrides all arrangements. Sanction advice, in the presence of the agreement, vis-a-vis the customer cannot be construed to disadvantage to the customer. Agreement is the document signed by both the parties and its contents have to be seen. The financial institution cannot be non-suited on the basis of mere non-production of sanction advice as there is no such requirement of law. Sanction advice becomes valid and enforceable contract only once grant of loan has been made, giving rise to certain rights in favour of both the rights. Thus, the observation that suit is not maintainable on account of non-production of sanction advice, is not tenable in the eye of law. Reliance, in this regard, is placed upon United Bank Limited v. Messrs Central Cotton Mills Ltd. and 5 others (2001 MLD 78), United Bank Ltd., Karachi v. Messrs Gravure Packaging (Pvt.) Ltd. and 4 others (2001 YLR 1549) and Messrs Qayyum Spinning Ltd. supra.

13. It is the duty of a Court of law, while dealing with rights and obligations of litigants, to give valid reasons in its orders which are likely to affect adversely against them. To have protection of law and to be treated in accordance with law is an inalienable right of every citizen and for determination of his civil rights and obligations, he is also entitled to due process of law, within the purview of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. The impugned order lacks explicit and legally valid reasons thus, is not sustainable in the eye of law.

14. Needless to observe here that in order to succeed in application for leave to defend, defendant was to show that his application was competent with all mandatory requirements of Section 10 of FIO, 2001. Likewise, plaintiff was to show, even if there was no application for leave to defend the suit or leave was refused to defendant, that his plaint was competent with all mandatory requirements of Section 9 of the FIO, 2001, and suit was not barred by any law. Reference is made to Apollo Textile

Mills Ltd.'s case (supra), Messrs Sadia Industries and others v. Soneri Bank Ltd. (2014 CLD 1458), Allied Bank of Pakistan Ltd. v. Mohib Fabric Industries Ltd. through Chief Executive (2004 CLD 716), Shahid Farooq Sheikh v. Allied Bank of Pakistan Limited (2005 CLD 1489), Silkbank Limited v. Messrs AZM Chemical Company through Proprietor and others (2014 CLD 1526), KASB Bank Limited v. Muhammad Ahmed Ansari (2014 CLD 1518), Habib Metropolitan Bank Limited v. Century 21 Textile and Sportswear (Pvt.) Limited and others (2014 CLD 729), Habib Metropolitan Bank Ltd. v. Mian Abdul Jabbar Gihllin and another (PLD 2013 Sindh 104), Royal Bank of Scotland Ltd. v. Saeed Abbas (2011 CLD 976) and Faysal Bank Limited v. Genertech Pakistan Ltd. and others (2009 CLD 856).

15. In view of the above discussion, this appeal is **allowed** and impugned order is set aside. The matter is remanded to learned Judge Banking Court, whereby suit as well as application for leave to defend the suit shall be deemed to be pending and shall be decided afresh strictly in accordance with law.

(Tariq Iftikhar Ahmad)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING.

Judge

Judge