

Stereo. H C J D A-38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

FAO No.40322 of 2020

Muhammad Saleem & others

Versus

Pak Brunei Investment Company Ltd.

J U D G M E N T

Date of hearing: 26.10.2021.
Appellants by: M/s. Muhammad Imran Malik and Kamran Bashir Mughal, Advocates.
Respondent by: M/s. Asad Javed and Sikandar Abbas, Advocates.
Barrister Ameer Abbas Ali Khan, A.A.G.
Research by: M/s. Muhammad Imran Sheikh, Additional District Judge / Senior Research Officer and Ahmad Zia Ch., Civil Judge / Research Officer, LHCRC.

MUHAMMAD SAJID MEHMOOD SETHI, J.- Through instant appeal, filed under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance (“**FIO**”), 2001, appellants have assailed judgment dated 25.08.2020, passed by learned Judge Banking Court-III, Lahore, whereby plaint of the suit filed by appellants was returned under Order VII Rule 10 C.P.C.

2. Brief facts of the case are that appellants filed suit for declaration against respondent to the effect that act of respondent to claim existence of mortgage in respect of the suit properties is illegal and unjustified; that the act of respondent to claim possession of the properties in question and their sale and to retain the possession of industrial plot and stock lying therein may be declared illegal; and that the respondent may be permanently restrained from taking possession of suit properties and alienating the same in any manner whatsoever. The respondent filed application for leave to defend the suit (“**leave application**”).

Learned Judge Banking Court, after hearing arguments from both sides, proceeded to pass the impugned judgment, whereby plaint of the suit was returned by invoking provisions of Order VII Rule 10 C.P.C., on account of lack of pecuniary jurisdiction. Through instant appeal, aforesaid judgment has been assailed.

3. Learned counsel for appellants submits that the valuation of the suit is to be determined with reference to the valuation determined by the plaintiff in the plaint, which was fixed as Rs.15,000/- for the purposes of Court Fee and jurisdiction by the plaintiffs / appellants. He adds that if valuation fixed by the appellants is wrong, then first of all, it has to be correctly fixed and thereafter, the Court can pass appropriate order and that too after grant of leave to defend the suit. In support of his submissions, he relied upon Messrs SUI Northern Gas Pipelines Ltd. through Deputy Chief (Legal) v. Muslim Commercial Bank Ltd., AVARI Hotel Branch, Lahore through Manager and another (2006 CLD 816) and Bank of Punjab through Attorney v. Manzoor Qadir and another (2021 CLD 1037).

4. Conversely, learned counsel for respondent defends the impugned judgment and submits that appellants have failed to point out any illegality or legal infirmity therein, thus, same is liable to be upheld. He contends that plaint can be returned even without grant of leave as per the well-settled principles of law. He further submits that valuation was not correctly fixed as is evident from the documents attached with the plaint, therefore, learned Trial Court was bound to return the plaint. In support, he referred to Sherin and 4 others v. Fazal Muhammad and 4 others (1995 SCMR 584), Rashid Ahmad v. Haq Nawaz and others (1982 CLC 9), Muhammad Riaz Aslam v. Muhammad Akhtar and 2 others (1993 CLC 1391), Shafi-ur-Rehman and 2 others v. Fateh Muhammad (PLD 2002 Karachi 511), Messrs M.M.K. Rice Mills v. Grays Leasing and others (2006 CLD 1147), Ghulam Hussain v. Sardar Fateh Khan (2009 YLR 1797), Sardar Zulfiqar Ali Khan and 8

others v. Malik Sajid Bashir (2013 YLR 942), Ms. Namoos Zaheer v. Azfar Hussain and another (2016 CLC 1425), Farzand Ali and others v. Bashir Ahmad (2016 YLR 1233), Al-Raheem Rice Mills v. Bank Alfalah Limited and others (2018 CLD 1351) and Muhammad Sae Khan v. Judge Banking Court and 3 others (2021 CLD 536).

5. Arguments heard. Available record perused.

6. Under the law, pecuniary jurisdiction of the Court has to be determined with reference to the valuation given in the plaint. Appellants have valued the suit for the purpose of jurisdiction and Court Fee as Rs.15,000/- in para 14 of the plaint, therefore, if the Court disagrees with the value assessed by the appellants, it should fix value of the suit under the provisions of the Suits Valuation Act, 1887 after holding such inquiry and collecting such material as may be deemed expedient by the Court and thereafter, matter could have been referred to the Court of competent jurisdiction for decision in accordance with law. Reliance is placed upon Zahid Zaman Khan and others v. Kha Afshar and others (PLD 2016 Supreme Court 409), Bahadur Khan and 6 others v. Muhammad Anwar and others (2017 YLR 179) and Dilawar Khan and 3 others v. Muhammad Zahir Ali and another (2019 CLC 79).

In Bahadur Khan's case supra, it has been observed as under:-

“4. Heard the learned counsel for the parties and perused the record. The forum of appeal is to be determined on the basis of original value of the suit and pecuniary jurisdiction of the District Judge is always subject to valuation in the plaint. Section 18 of the West Pakistan Civil Courts Ordinance 1962, as amended provides that appeal against the decree or order of Civil Judge would lie to the District Judges, if the value of the original suit in which such decree or order was made did not exceed Rs.500,000/- (five lac) and to the High Court in any other case. If the defendant questioned the original value of the suit, or Court disagreed with the determined jurisdiction value of the suit assessed by the plaintiffs, it could have passed an order under Section 11 of the Suits Valuation Act, 1887, fixing the value after framing an issue and providing an opportunity to the parties to

produce evidence. In this respect, reference may be made to Illahi Bakhsh v. Mst. Balqees Begum PLD 1985 SC 393, wherein the Hon'ble Supreme Court of Pakistan observed that "the value of the suit for the purpose of pecuniary jurisdiction in respect of appeal would be the same as mentioned in the plaint"..."

7. Needless to say that the Banking Court is empowered to examine the plaint to determine the breach of obligation by a financial institution or a borrower before it fixes a date of hearing to decide the leave application. The Banking Court is well within its legal right to reject or return a plaint by invoking any provision under the C.P.C. before summoning the defendant under section 9(5) of the FIO, 2001 or before fixing a specific date of hearing of the leave application. However, once the Banking Court, after examining the plaint, is satisfied that the same is in order as per the requirements of Section 9 and has proceeded to issue summons to the defendant under section 9(5) *ibid*, pursuant to which a defendant has filed the leave application and a date of hearing of the leave application has been fixed, it ceases to take any further step under the provisions of the C.P.C. without first deciding the leave application in accordance with the requirements of Section 10 of the Ordinance. The Banking Court, in such circumstances, is duty bound to first grant or reject the leave application in terms of Sections 10(9), 10(11) or 10(12) of the Ordinance before taking any other step towards the progress and continuation of the suit.

In this case, when the plaint was presented before learned Judge Banking Court, it issued summons to the defendant. In response thereto, the respondent filed the application for leave to appear and defend the suit. Admittedly the said application was not decided by the learned Banking Court, while it was obliged under the law to firstly decide respondent's applications for leave to defend the suit. Thus, we feel that the learned Judge Banking Court has, in fact, gone outside the scope of Section 10(8) of the Ordinance, 2001. It has nowhere been provided in section 10 of the

Ordinance that at the time of hearing the leave application, the Banking Court is competent to either reject or return the plaint. If the learned Banking Court was of the view that respondent has raised substantial questions of law and facts, then leave could have been granted but the plaint could not be returned or rejected at that point of time. Needless to add that the Banking Courts, which are the creature of the statute, are bound by the provisions and procedure provided under that statute. Reference is made to Messrs Waheed Corporation through Proprietor and another v. Allied Bank Of Pakistan through Manager (2003 CLD 245), Sheikh Muhammad Kashif v. Askari Leasing Limited through Manager/Chief Executive of Branch/Recovery Officer (2004 CLD 1645), National Bank of Pakistan through Zonal Head and Constituted Attorney v. Messrs Suraj Ghee Industries Limited through Executive Director (2005 CLD 1201), Muhammad Azwar Siddiqui v. Chief Executive Union Leasing Ltd. and 21 others (2006 CLD 946), PASSCO v. Omer Bilal Traders (Pvt.) Limited (2007 CLD 492), Amanullah Khan v. Habib Bank Limited (2014 CLD 1181), Anees-Ur-Rehman v. Faysal Bank Limited through Manager (2019 CLD 1031), BRR GUARDIAN MODARABA through Authorized Representative/Manager v. ALTAS Insurance Company Limited (2020 CLD 1379) and Bank of Punjab through Attorney v. Manzoor Qadir and another (2021 CLD 1037).

8. In view of the above discussion, this appeal is **allowed** and impugned judgment dated 25.08.2020, passed by learned Judge Banking Court-III, Lahore, is set aside. Consequently, appellant's suit as well as respondent's PLA and other pending application, if any, shall be deemed to be pending before learned Judge Banking Court, who is directed to firstly decide the leave application before proceeding further in the suit, in accordance with law, after hearing both the parties, within a period of **thirty days** from the date of receipt of certified copy of this order and thereafter, in case leave is granted, learned Judge Banking Court shall frame preliminary issue

relating to jurisdiction as raised by respondent and then decide the main suit in accordance with law, through a well-reasoned judgment, within a period of two months, under intimation to this Court through Deputy Registrar (Judicial).

(Abid Aziz Sheikh)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING.

Judge

A.H.S.