

2016 C L D 766

[Lahore]

Before Amin-ud-Din Khan and M. Sohail Iqbal Bhatti, JJ

Messrs BHANGOO FARMING SERVICES and 2 others---Appellants

Versus

The BANK OF PUNJAB through Manager---Respondent

R.F.A. No. 1159 of 2014, heard on 16th December, 2014.

(a) Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001)---

---Ss. 10, 9 & 7---Adjudication by Banking Court---Leave to defend---Duties of Banking Court---Scope---Application for leave to defend suit was dismissed and suit was decreed---Contention of defendant was inter alia that it had raised substantial questions of law and fact in the application for leave to defend, and the objections raised by the defendant were not considered by the Banking Court---Held, that before deciding the suit, it was duty of Banking Court to consider and examine the plaint as well as the documents relied and sued upon by the plaintiff forming basis of the proceedings---Requirement of exact adherence to legal demands was more stringent for plaintiff while invoking jurisdiction of a special court created under a special law when the conditions and prerequisites to resort to such jurisdiction had been specifically and expressly described in the special law---Court in such matters could not presume plaintiff's assertions and pleadings to be correct---Court had to apply terms of a special law and was under an obligation to follow the word of the law than the word of the plaint even in absence of any application for leave to appear and defend suit---At the stage of deciding application for leave to defend; the Banking Court had to be guided by the main rationale behind the law which was not to oust defendant from trial when the defendant had an arguable case---Defendants, in the present case, had raised substantial questions of law which could not have been brushed aside in a causal manner and could only have been decided through a speaking order---Defendants had raised an objection in an unambiguous manner that the suit had not been filed by an authorized person and the statement of accounts had not been duly certified under S. 9(1) of the Financial Institutions (Recovery of Finances) Ordinance, 2001; but the Banking Court did not adjudicate upon the same through a speaking order, which was violative of the law---High Court allowed the application for leave to defend subject to deposit of fifty

percent of decretal amount and case was remanded to Banking Court with direction to proceed according to law---Appeal was allowed, accordingly.

Messrs Taxila Cotton Mills Ltd. and 10 others v. Allied Bank of Pakistan Ltd. 2005 CLD 244 and Government of Sindh through Land Acquisition Officer and others v. Muhammad Juman and another 2009 SCMR 1407 rel.

(b) Administration of justice---

---Special law---Adjudication of matters under a special law---Scope---Requirement of exact adherence to legal demands was more stringent for plaintiff while invoking jurisdiction of a special court created under a special law when the conditions and prerequisites to resort to such jurisdiction had been specifically and expressly described in the special law.

(c) Words and phrases---

---"Substantial"---Meaning---Substantial meant of real worth and importance.

Hassan Nawaz Sheikh for Appellants.

Saqib Saleem for Respondent.

Date of hearing: 16th December, 2014.

JUDGMENT

M. SOHAIL IQBAL BHATTI, J.---Through this appeal, the appellants have challenged the order and decree dated 21.05.2014 passed by the learned Judge Banking Court-I, Lahore.

2. The facts of the case are that the respondent/plaintiff-bank filed a suit for recovery of Rs.1,62,94,135/- against the appellants/defendants. In response to summons issued under section 9(5) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 the appellants/defendants appeared before the learned Judge Banking Court and filed application for leave to appear and defend the suit. The learned Judge Banking Court after dismissing the application for leave to appear and defend the suit vide impugned order dated 21.5.2014 decreed the suit for an amount of Rs.1,37,42,745/- against appellants/defendants along with cost and cost of funds. Hence, this appeal.

3. The learned counsel for the appellants argued that the impugned order and decree has been passed without dealing with the objections raised by the appellants/defendants. The suit has not been filed by an authorized person and signatory of the plaint was not the Branch Manager. The learned counsel for the appellants further argued that the statement of account attached with the plaint has not been certified under Bankers' Book Evidence Act, 1891 and these objections had been specifically raised in application for leave to appear and defend the suit, but the learned Judge Banking Court while passing the impugned order and decree has not discussed the effect of non-compliance with mandatory provision of section 9(1) of the Financial Institutions (Recovery of Finances) Ordinance, 2001. It has been further argued that the appellants had raised substantial questions of law and fact which had been brushed aside by the learned Judge Banking Court. Learned counsel for the appellants/defendants further argued that the running finance facility was allowed to the appellants through Sanction Letter dated 22.7.2006 but no disbursement had been made for more than one year but the respondent bank charged mark-up without any authorization.

4. On the other hand, learned counsel for the respondent/plaintiff-bank vehemently supported the impugned order and decree. It has been argued that appellants-defendants had not denied the availing of finance facility and execution of the documents.

5. We have considered the arguments advanced by learned counsel for the parties and have also gone through the record with their assistance.

6. The scrutiny of the suit has led us to the conclusion that the impugned order and decree dated 21.05.2014 is a result of non-examination of documents filed by the respondent/plaintiff-bank. The learned Judge Banking has not examined the discrepancies in the statement of account as has been pointed out by the learned counsel for the appellants and that the signatures on the plaint and statement of account are of different officials.

7. Before deciding the suit it is the duty of the Banking Court to consider and examine the plaint as well as the documents relied and sued upon by the plaintiff forming basis of the pleadings. The decree cannot be passed by the court in routine manner. The requirement of exact adherence to the legal demands is more stringent for the plaintiff while invoking the jurisdiction of special court created under the special law when the conditions and pre-requisites to resort such jurisdiction have been specifically and expressly described in the special law. The court in such matters cannot presume plaintiff's assertions and pleadings to be correct. We are of the considered

view that the court has to apply terms of special law; and is under an obligation to follow the word of law than the word of plaintiff even in absence of any application for leave to appear and defend the suit. This Court in the judgment reported as "Messrs Taxila Cotton Mills Ltd and 10 others v. Allied Bank of Pakistan Ltd." (2005 CLD 244) has observed as under:-

"The stage when a leave to defend is being sought is not a stage where an action is being tried. A court at such a stage is required to see whether there was a bona fide allegation of a triable issue, which was not illusory and was plausible."

Therefore, we are of the view that at the stage of deciding application for leave to appear and defend the suit the court has to be guided by the main rationale behind the law which is not to oust the defendant from the trial when the defendant has an arguable case. We have noticed that the appellants-defendants in their application for leave to appear and defend the suit had raised substantial questions of law which could not have been brushed aside in a casual manner and could have only been decided through a speaking order. We are of the considered opinion that the Banking Court has to apply its judicial mind and where the substantial objections had been raised; these objections should have been answered by the Banking Court through a speaking order manifesting by itself that the court has applied its mind to the resolution of the issues involved for their proper adjudication and the litigants do expect a patient and judicious treatment of their cases and their determination by proper orders. An objection has been raised in an unambiguous manner that the suit has not been filed by an authorized person and the statement of account has not been duly certified under Section 9(1) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 but the learned Judge Banking Court has not even bothered to discuss and adjudicate upon these objections through a speaking order which in our opinion is violative of the law laid down by the Hon'ble Supreme Court of Pakistan in *Government of Sindh through Land Acquisition Officer and others v. Muhammad Juman and another* (2009 SCMR 1407) wherein the Hon'ble Supreme Court of Pakistan has observed as under:-

"As regards merits of the case. We upon deeper examination of the impugned judgment find that the learned High Court after narrating the facts of the case and recording respective contentions raised by learned counsel of both the parties without assigning any reasons abruptly dismissed appellants' appeal, inasmuch as, no findings were rendered by the learned Single Judge. This Court in the cases reported as *Gouranga Mohan Sikdar v. The Controller of Import and Export* PLD 1970 SC 158 and *Mollah Ejahar Ali v. Government of East Pakistan* PLD 1970 SC 173, held that the Court must pass a speaking judicial order manifesting by itself that the Court applied its mind to the issues involved in the

case. Even section 24-A of the General Clauses Act requires an executive authority to pass the order reasonably, fairly, justly and by rendering reasons. Learned counsel for the respondents, when confronted with the afore-noted legal position, has nothing to say much. Additionally, we find that the learned High Court while deciding the matter neither referred to evidence nor any other material available on record justifying dismissal of appellant's appeal. Although learned counsel for the parties have raised other contentions, yet we have restrained ourselves from giving any findings on the said contentions, lest it may prejudice cause of any of the parties in post remand proceedings. However, the parties are at liberty to raise the pleas available to them under the law before the learned High Court."

8. We are consciously not commenting on the grounds raised by the appellants as the objections raised by the appellants will be decided on the basis of evidence which may be led by both the sides. We are of the considered opinion that the appellants had raised substantial questions of law and fact in their application for leave to appear and defend the suit. This Court has already observed that the term "substantial" means of real worth and importance. For grant of leave to defend the suit by the Banking Court the appellants had raised serious questions which entailed consequences raising cause of concern and were worthy of consideration which in our opinion has not been done.

9. For the foregoing observations/reasons we accept the appeal and set aside the order and decree dated 21.5.2014 passed by the learned Judge Banking Court-I, Lahore. The application for leave to appear and defend the suit filed by the appellants is accepted subject to deposit of 50% of the decretal amount within one month with the trial court. In case this condition is not fulfilled this appeal shall be deemed to have been dismissed. The case is remanded back to the learned Judge Banking Court No-I, Lahore for proceeding in accordance with law. Parties are directed to appear before the learned Judge Banking Court No-I, Lahore on 22.12.2014.

KMZ/B-3/L

Case remanded.