

S B L R 2021 Baluchistan 8.

[High Court of Baluchistan (Quetta)]

*Present: Mr. Justice Naeem Akhtar Afghan
& Mr. Justice Abdul Hameed Baloch*

Ajmal Khan & others---Appellants

versus

National Bank of Pakistan & others---Respondents

HCA No. 01 of 2019 decided on 30th September, 2019

A) Financial Institution Ordinance, 2001---Section 22---read with Section 151 of Civil Procedure Code (V of 1908)---Application for leave to defend the suit/written statement was filed by the appellants on 18th December 2018 before the trial Court i.e. within thirty (30) days of the publication and as such the same was within the prescribed period of limitation i.e. 30 days but while refusing the appellants leave to defend the suit and decreeing the suit, the trial Court has wrongly held that the appellants have filed the application for leave to defend the suit/written statement after statutory period of thirty days. The trial Court has wrongly held that the same is time barred trial Court has dealt with the suit in a very casual manner and has failed to properly appreciate the facts and circumstances of the case. The impugned judgment passed by the trial Court is suffering from grave illegalities---Held; the appeal is accepted with no orders as to cost. The impugned judgment & decree is set aside. The application for leave to defend the suit filed by the appellants and respondent Nos.2, 3 is accepted and same is treated as written statement. The trial Court is directed to frame issues arising out of the pleadings of the parties, to record evidence of the parties and thereafter to decide the suit on merits in accordance with law, trial Court has dealt with the suit in a very casual manner and has failed to properly appreciate the facts and circumstances of the case. The impugned judgment passed by the trial Court is suffering from grave illegalities---Consequently; the

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appeal is accepted with no orders as to cost. The impugned judgment & decree dated 8th February 2019 passed by learned Judge Banking Court *Baluchistan Quetta* in suit No.77/2018 is set aside. The civil suit No.77/2018 is deemed pending before learned Judge Banking Court *Baluchistan Quetta*. The application for leave to defend the suit filed by the appellants and respondent Nos.2, 3 is accepted and same is treated as written statement. The trial Court is directed to frame issues arising out of the pleadings of the parties, to record evidence of the parties and thereafter to decide the suit on merits in accordance with law. [P-10 & 11]A

Mr. Talat Waheed, Advocate for the Appellants.

Mr. Arshad Ali Rajput, Advocate for the Respondent No.1 alongwith M/s Fahad Ahmed Durrani, Manager & Muhammad Anwar Bank Officer NBP.

Date of hearing: 13th September, 2019

JUDGMENT

NAEEM AKHTAR AFGHAN, J. This judgment disposes of High Court Appeal No.01/2019 filed by the appellants (defendant No.3 to 8) against the judgment & decree dated 8th February 2019 (hereinafter "**the impugned judgment**") passed by learned Judge Banking Court *Baluchistan Quetta* (hereinafter "**the trial Court**") whereby suit No.77/2018 filed by the respondent No.1 (plaintiff) for recovery of Rs.1,51,63,933.50 under 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (hereinafter "**the Ordinance**") has been decreed while refusing leave to defend the suit to the appellants.

2. After hearing learned counsel for the parties, we have perused the available record which reveals that suit was instituted by the respondent No.1 on 16th November 2018.

Notices were ordered to be issued to the appellants for 18th December 2018 and in this regard publication was also made in *Daily Mashriq Quetta* dated 17th November 2018 & *Baluchistan Express Quetta* dated 17th November 2018 for the date of 18th December 2018 & *Balochistan Express Quetta* dated 17th November, 2018 for the date of 18th December, 2018.

3. Record reveals that notices for the appellants for the date of 18th December 2018 were issued on 19th November, 2018 by the trial Court.

The reports of the process server reveal that notices for respondent Nos.2 & 3/defendant Nos.1 & 2 were served upon daughter of respondent No.3/defendant No.2 while the remaining notices were served upon the appellant No.1/defendant No.4 but report of process server on all the notices is silent about the date of serving the above notices.

In view of the above circumstances, the date for filing leave to defend the suit will reckon from the publication which was made by the trial Court in the Daily Newspaper dated 17th November 2018 for the date of 18th December 2018.

4. Record transpires that application for leave to defend the suit/written statement was filed by the appellants on 18th December 2018 before the trial Court i.e. within thirty (30) days of the publication and as such the same was within the prescribed period of limitation i.e. 30 days but while refusing the appellants leave to defend the suit and decreeing the suit in para-10 of the impugned judgment, the trial Court has wrongly held that the appellants have filed the application for leave to defend the suit/written statement after statutory period of thirty days. The trial Court has wrongly held that the same is time barred.

5. After going through the record, it is concluded that while holding the application of the appellants for leave to defend the suit/written statement as time barred, the trial Court has erred in facts as well as law and has committed grave illegality.

6. Record reveals that all the defendants including respondent No.3/defendant No.2 (*Mehmood Khan Kakar*) had submitted a joint application for leave to defend the suit/written statement with their signatures wherein they had raised substantial question of facts as well as law which required recording of evidence but instead of granting the appellants and respondent Nos.2 & 3 leave to defend the suit and providing them opportunity to lead evidence,

the trial Court has decreed the suit in a slip shod manner vide impugned judgment.

7. Record transpires that on 8th February 2019 Mr. *Masoom Khan Kakar, Advocate* learned counsel for respondent Nos.2 & 3/defendant Nos.1 & 2, who is also real brother of respondent No.3/defendant No.2 (*Mehmood Khan Kakar*), appeared the trial Court with the statement that they are ready to deposit the loan amount in installments and admitted the loan.

According to the order sheet of 8th February 2019 of the trial Court, the suit filed by respondent No.1 was decreed against all the defendants with consent of both the parties.

In the record of trial Court, the power of Mr. *Masoom Khan Kakar, Advocate* was signed by respondent No.3/defendant No.2 (*Mehmood Khan Kakar*) and it was not signed by the appellants (i.e. the remaining defendants), *Mr. Masood Khan Kakar Advocate* was not representing all the defendants on 8th February 2019 before the trial Court. There is nothing on record to show that all the defendants had authorized Mr. *Masoom Khan Kakar, Advocate* to represent them before the trial Court on 8th February 2019.

On the contrary, record reveals that all the remaining defendants i.e. The appellants were represented before the trial Court by *Mr. Talat Waheed Advocate* who had filed power on their behalf.

8. In view of the above circumstances, due to consent of *Masoom Khan Kakar Advocate*, the trial Court could have decreed the suit only against respondent Nos.2 & 3/defendant Nos.1 & 2 but no against all the defendants/appellants.

9. From the above, it transpires that the trial Court has dealt with the suit in a very casual manner and has failed to properly appreciate the facts and circumstances of the case. The impugned judgment passed by the trial Court is suffering from grave illegalities.

For the above reasons, the appeal is accepted with no orders as to cost. The impugned judgment & decree dated 8th February 2019 passed by learned Judge Banking Court *Baluchistan Quetta* in suit No.77/2018 is set aside. The civil suit No.77/2018 is deemed pending before learned Judge Banking Court *Baluchistan Quetta*. The application for leave to defend the suit filed by the appellants and respondent Nos.2, 3 is accepted and same is treated as written statement. The trial Court is directed to frame issues arising out of the pleadings of the parties, to record evidence of the parties and thereafter to decide the suit on merits in accordance with law.

In case, the respondent Nos.2 & 3/defendant Nos.1 & 2 stand by the commitment dated 8th February 2019, the trial Court shall obtain separate statement in writing from respondent Nos.2 & 3/defendant Nos.1 & 2 and thereafter shall pass an appropriate order.

Appeal allowed/order set aside