

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Civil Revision No. 238/2019

HBL

Vs

Muhammad Iqbal, etc

Petitioner by: Barrister Bilal Akbar Tarrar, Advocate,

Respondent by: Mr. Abdul Rasheed Awan, Advocate

Date of Hearing: 27.04.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant civil revision petition, the petitioner (Habib Bank Limited) impugns the order dated 29.03.2019 passed by the learned Civil Judge 1st Class, Islamabad-West, whereby application under Order VII Rule 11 of the Civil Procedure Code, 1908 “CPC” filed by the petitioner was dismissed.

2- The facts, essential for the disposal of instant civil revision petition, are that the petitioner bank stood surety of the respondent for fulfilling a business transaction with the Pakistan Industrial Development Corporation (PIDC) vide bank guarantee No.1402 dated 09.07.1986 to the tune of PKR.8.822 Million along with markup @ 11% per annum. Subsequently, in April 2009, the respondent filed a suit for cancellation of said bank guarantee against the petitioner wherein the latter filed an application under Order VII Rule 11 of the CPC. The learned trial Court vide impugned order dismissed the application by observing that “*the matter is not in respect of recovery as in relation of the bank and its customer may have and it is different in its nature from the relation of lender and barrower from the lending activities.*” The said order is being assailed through the instant civil revision petition.

3- Learned counsel appearing on behalf of the petitioner submits that the dispute is between the customer and the financial institution in relation to a financial facility,

extended through the instrument, sought to be cancelled, therefore, being the subject of the Banking Court, the court of plenary jurisdiction is not competent to adjudicate upon the matter. It is added that 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 a Banking Court and that 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 the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("the Ordinance, 2001"). Learned counsel referred provisions of section 7(4) and 9(1) of the Ordinance, 2001 and further placed reliance upon case laws reported as "Ch. Muhammad Salim Vs Additional District Judge Sheikhpura and 10 others (2019 CLD 205), Mian Mehmood Ahmad Vs Hong Kong and Shanghai Banking Corporation Limited through Manager and 6 others (2010 CLD 293) and Procter and Gamble Pakistan Limited Vs Bank Al-falah Limited Karachi and 2 others (2007 CLD 1532)".

4- On the other hand, learned counsel for the respondent/plaintiff argued that the claim in suit does not relate to any finances or any dispute relating to the facility extended to the respondent/plaintiff through the document, sought to be cancelled. It is further asserted that the document itself has lost its authenticity by efflux of time due to its expiry after 31.08.1989. The learned counsel further argued that as the document stood expired by its own repealing clause, the relationship of customer and financial institution is out of question. Learned counsel placed reliance upon case law reported as "Amtex Limited through Director Vs Bank Islami Pakistan Limited and 8 others" (2016 CLD 2007).

5- I have heard the contentions of the learned counsel for the parties and have perused the record with their able assistance.

6- It is settled principle that a Banking Court retains jurisdiction over a matter inter-se "customer" and "financial institution" as defined in the law and for the fulfillment of obligations in relation to "finance", mentioned in Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001. The question of maintainability of a suit for declaration, cancellation of document, permanent injunction before a Banking Court was elaborately discussed in the case of Amtex Limited (Supra), and it was held that:-

"32. Secondly, for various reasons, the term 'includes' does not expand the scope of the term 'obligation' so as to include the nature of the suit filed by the plaintiff. As stated above, this is a special jurisdiction conferred upon this Court and can only be triggered if a default in the fulfillment of any obligation is committed. Therefore, any question regarding the expansion of the meaning of the term 'obligation' will be in the realm of a question of jurisdiction and it will have to be seen in that perspective. What is sought to be urged by the learned counsel for the plaintiff would, in fact, result in the assumption of jurisdiction by this Court on the subject matter of the suit which is not amenable to the jurisdiction of this Court. Simply put, this Court will have jurisdiction in case of any allegation of default in the fulfillment of any representations, warranties and covenants made by or on behalf of the customer but will not assume jurisdiction if the allegation is that the default is committed in respect of any representations, warranties and covenants made by or on behalf of the financial institution. There is a world of difference in the two concepts and the legislature has conferred jurisdiction on this Court with regard to the former and not the latter. The jurisdiction of this Court cannot be enlarged on the basis of any rule of interpretation propounded by the courts."
/emphasis supplied]

7- In the present case, the respondent through the referred suit sought decree for declaration, cancellation of document/bank guarantee dated 09.07.1986, permanent and mandatory injunction, while Section 39 of the Specific

Relief Act, 1877 explicitly provides that any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. The case laws relied upon by learned counsel for the petitioner are not applicable to the facts of the case at hand.

8- In view of above, by following the law on the subject, it is concluded that the Civil Court retains jurisdiction over the matter-in-issue, therefore, the impugned order dated 29.03.2019 does not call for any interference. Consequently, the instant civil revision petition fails and is accordingly dismissed.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Announced in open Court on 12-05-2020

JUDGE