Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR

JUDICIAL DEPARTMENT

FAB No. 01-P of 2016

with CM No.3 of 2016

JUDGMENT

Date of hearing 28.03.2018

National Bank of Pakistan

Vs

Haroon Qayum

Appellant by: Mr. Nazir Ullah Qazi, advocate.

Respondent by: Mr. Aimal Khan Barkandi, advocate.

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QAISER RASHID KHAN, J-. Through the appeal in hand, the appellant-bank has expressed its grievance against the judgment and decree dated 01.12.2015, passed by the learned Banking Court-I, Peshawar whereby the application of the respondent-defendant for correction of the decretal amount was allowed.

2. All that the learned counsel for the appellant-bank vehemently urges is that in view of Section 27 of the Financial Institution (Recovery of Finance) Ordinance, 2001, the learned Banking Court had no jurisdiction to correct or review the judgment and decree as it was passed ex parte on

01.08.2015 on account of the non-appearance of the learned counsel for the respondent-defendant as well as non-filing of leave to defend application in time but then on the application moved by the respondent-defendant the decretal amount was reduced from Rs. 673,246/- to Rs. 6,03,135/-. He further contends that the decree earlier passed in favour of the appellant-bank was strictly in accordance with law and keeping in view the duly certified statement of the account. He relied on the unreported judgment of this court dated 01.06.2016 in FAB No. 20-P of 2015.

3. The learned counsel for the respondent-borrower on his turn supported the impugned judgment and decree on almost the same grounds as detailed therein.

Arguments heard and the available record perused.

4. As the record unfolds, it was the respondent-borrower who had applied to the appellant-bank for the grant of Gold Finance facility of Rs. 508,000/- which was accordingly sanctioned in his favour vide Demand Finance Gold Proposal

dated 16.04.2013 with its date of expiry as 30.06.2014. In this respect he executed the necessary documents including the Finance Agreement, Letter of Pledge and Demand Promissory Note. A cursory glance at the Finance Agreement would show that an amount of Rs. 508000/- has been mentioned therein as the sale price rather so to say the amount availed of by the respondent-borrower from the appellant-bank, but strangely enough, the very figure of Rs. 508000/- has also been mentioned to be the purchase price or for that matter the buy-back price or mark up amount payable by the respondent-borrower to the appellant-bank by the date of expiry of the finance limit. Even the date of expiry has not been mentioned in the Finance Agreement. The said agreement is not only incomplete and deficient according to Banking Practice and Procedure but has also limited the liability of the respondent-borrower to the appellant-bank to the extent of Rs. 508000/- i.e. the finance amount availed of by him. The appellant-bank has not been able to present any account or explanation for such gross irregularity committed by it.

However, in the undated Demand Promissory Note, Rs. 603351/- has been mentioned to be the amount payable by the respondent to the appellant-bank by the date of expiry i.e. 30.06.2014.

It was on account of the default committed by the respondent-borrower in liquidating his outstanding liability when the appellant-bank was constrained to file a recovery suit as on 04.06.2015 against him before the learned Banking Court which was decreed ex parte on 01.08.2015 to the extent of Rs. 673246/- with costs of suit and costs of fund as notified by the State Bank of Pakistan from time to time from the date of default till the final realization and accordingly, execution proceedings were simultaneously set in motion.

5. It was thereafter when the respondent/judgement debtor submitted an application for the correction of the decretal amount and after the reply was sought from the appellant-bank, the request of the respondent/judgment debtor was acceded to and the decretal amount was corrected as Rs. 603135/-instead of Rs. 673246/-, in turn

prompting the appellant-bank to file the present appeal.

6. During the course of brief submissions, our attention was drawn to the very statement of account as annexed with the suit which is otherwise certified under section 4 of the Bankers' Books Evidence Act, 1891. It shows an amount of Gold Finance of Rs. 508000/- availed of by the respondents as on 16.04.2013 and also the buy-back price of Rs. 603135/- as on 30.06.2014 i.e. the date of the expiry of finance limit. Said amount of Rs. 603135/- also corresponds with the figure reflected in the Demand Promissory Note which is in fact the final amount payable by the respondent-borrower to the appellant-bank. However, after the date of expiry and in view of the default committed by the respondent-borrower in paying off his liabilities, the appellant-bank could have approached the learned Banking Court through a recovery suit but it opted not to go for such exercise till it filed the recovery suit after about one year of the expiry of the finance limit as on 4.06.2015 but in the meanwhile, still, debited an amount of Rs. 70111/- to the account of the

respondent-borrower on 20.05.2015 whereby the outstanding amount soared to a figure of Rs. 673246/- and that was the figure claimed by the appellant-bank from the respondent-borrower through its recovery suit.

When the learned counsel for the appellant-bank was specifically questioned as to how could the appellant-bank debit such an exorbitant amount of Rs. 70111/- to the account of the respondent-borrower after the date of expiry of the financial limit, he stated that the same was by way of costs of fund. However, the statement of account does not mention the said phrase 'Costs of Fund' but only the word 'Transfer' in respect of the amount of Rs. 70111.00. When still questioned, as to under what provision of law or even under State Bank Regulation, the appellant-bank could justify the debiting of the costs of funds to the account of the respondents, the learned counsel could not furnish any plausible reply.

7. Initially an amount of Rs. 673246/- (which also included the amount of Rs. 70111/- alleged by the appellant-bank to be the 'Costs of Fund') was

decreed ex parte against the respondent-borrower together with further 'costs of fund'. It appears that the appellant-bank in utter disregard to the standard Banking Law and Practice debited such big amount of Rs. 70111/- to the account of the respondent-borrower under the subterfuge 'Costs of Funds' albeit through a 'Transfer' entry and also got a decree in its favour for further costs of fund from the learned court. It goes without saying that such exercise was undertaken by the appellant-bank in a surreptitious manner as neither in its plaint nor in the statement of account, it has said a word about such entry to be the ' Costs of Fund'. By allowing the application of the respondent-borrower for the correction of the decretal amount, the learned Banking Court indeed rectified its own error and the same was not only in the fitness of circumstances but in accordance with law as well.

8. Since the learned counsel for the appellant has relied on section 27 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, therefore, it would be more apt to reproduce the same as below;

> ***"Finality of order:- Subject to the provisions of Section 22, no Court or other authority shall revise or review or call, or permit to be called, into question any proceeding, judgment, decree, sentence or order of a Banking Court or the legality or propriety of anything done or intended to be done by the Banking Court in exercise of jurisdiction under this Ordinance.***
>
> ***Provided that the Banking Court may, on its own accord or on application of any party, and with notice to the other party or, as the case may be, to both the parties, correct any clerical or typographical mistake in any judgment, decree, sentence r order passed by it."***

The proviso to section 27 furnishes sufficient reply to the objection of the learned counsel for the appellant-bank viz the impugned judgment and decree of the learned Banking Court which stipulates in clear terms that the Banking Court may either of its own accord or on application of any party and after notice to the opposite side may

correct any clerical or typographical mistake in its judgment.

9. The learned Banking Court-I, Peshawar through its impugned findings only rectified its own mistake through the correction of the decretal amount and the same cannot be termed to be the review of the ex parte judgment passed earlier.

10. In view of the forgoing discussion, we do not find any illegality in the impugned findings of the learned Banking Court-I, Peshawar and accordingly, this appeal stands dismissed with no order as to costs.

Announced.
28.03.2018.
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JUDGE

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6/4/18