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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR

S CIVIL PETITION NO.3057 OF 2019.

(Against the order dated 27.06.2019 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in RFA No.122 of 2013).

Muhammad Saleem Khan.

...Petitioner(s).

Versus

MCB Bank Limited.

...Respondent(s)

For the petitioner(s): Mr. Abdul Rashid Awan, ASC.

For the respondent(s): Barrister Umer Aslam Khan, ASC.

Date of Hearing: 03.12.2019.

ORDER

IJAZ UL AHSAN, J.- The petitioner seeks leave to appeal against a judgment of the Lahore High Court, Rawalpindi Bench, Rawalpindi dated 27.06.2019 ("**impugned judgment**"). Through the impugned judgment a Regular First Appeal filed by the respondent-bank was allowed and the judgment and decree of the Banking Court whereby the suit of the respondent-bank was dismissed, was set aside. It was ordered that the suit of the bank shall be deemed to be pending before the Banking Court which shall proceed further in accordance with law.

2. Brief facts necessary for decision of this lis are that the petitioner availed business finance facility from the respondent-bank. He signed and executed various facility and

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security documents and availed the facility. The petitioner allegedly defaulted in his repayment obligations which led to a suit for recovery of Rs.5,702,523.87/- being filed by the respondent-bank. The said suit was dismissed by the Banking Court vide judgment and decree dated 28.02.2013 on the ground that the provisions of Section 9(2) of the FIO had not been complied with insofar as the statement of account attached with the plaint was not duly certified in accordance with the provisions of the Bankers' Books Evidence Act, 1891 (**"Act, 1891"**).

3. Aggrieved of the order of the Banking Court, the respondent-bank filed an appeal before the High Court in terms of Section 22(1) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (**"FIO"**). The appeal was allowed in the afore-noted terms.

4. Learned counsel for the petitioner has vehemently argued that the learned Judges of the High Court misapplied and misinterpreted the provisions of Section 2(8) of the Act, 1891 as well as Section 12 of the Electronic Transactions Ordinance, 2002 (**"ETO"**). He further maintains that the learned High Court has repeatedly held that it is a mandatory requirement of Section 9(2) of the FIO that the plaint has to be accompanied by an Account Statement duly certified under the provisions of the Act, 1891. He further maintains that the ETO has no application in banking matters. Even otherwise, FIO being a special law dealing

only with banking matters would prevail over provisions of the ETO, which is general law.

5. Having heard the learned counsel for the petitioner, we find that the Banking Court fell into grave error in recording a finding that the account statement was not duly verified in accordance with the provisions of the Act, 1891. We notice that the account statement which has been attached with the petition at pages 60-70 carries a note at the end to the following effect:

"Certified and verified on Oath that all the entries contained in the statement of account are true copies of the entries contained in ordinary books of the bank maintained and prepared in ordinary course of business and the said books are still in the custody of the bank. These entries have been certified after verification from the original ledger/bills of the banker."

6. The note practically incorporates the language of Section 2(8) of the Act, 1891 and therefore meets the requirement of the law. We have confronted the learned counsel for the petitioner with the language of the note and asked him to explain how it does not meet the requirements of the Act, 1891 and hence Section 9(2) of the FIO. He has not been able to come up with any plausible or legally sustainable arguments to defend the judgment of the Banking Court. The learned ASC half-heartedly attempted to argue that every page of the account statement is required to contain the said certification. We are afraid the argument is misconceived and is not supported by a plain reading of the language of Section 2(8) of the Act, 1891. We have also noticed that each page of the Account Statement is duly stamped and initialled by the concerned official of the bank

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which in our opinion amply and adequately meets the requirements of the law. The Account Statement is one comprehensive document containing the entire history of the Account containing credit and debit entries in a chronological order and is only required to contain verification at the end of such document.

7. We notice that the judgment of the Banking Court is based upon alleged non-compliance with the provisions of the Act, 1891. Such finding of the Banking Court has been found to us to be totally erroneous and misconceived. In this situation, the findings of the High Court as well as this Court to the extent of requirements of the provisions of the Act, 1891 are enough to set aside the impugned judgment and decree of the Banking Court. Therefore, we do not at this stage and in the facts and circumstances of this case consider it necessary to go into the question of applicability of the Electronic Transactions Ordinance, 2002 (ETO). Even otherwise, the High Court seems to have introduced this aspect on its own accord despite the fact that this issue did not find any mention in the judgment impugned before the High Court. Consequently, we are not recording any finding relating to the applicability of ETO on banking transactions. The said question will be examined and ruled on in an appropriate case in the future. For the present purposes, we have found the very basis on which the suit of the respondent was dismissed as erroneous and misconceived. This reason is enough to dismiss this petition and let the Banking Court proceed with the matter in terms of the order passed by

the High Court. We also notice that despite being a Banking/Recovery suit this matter has dragged on in Courts for the past six years. This state of affairs has a negative impact on the economy and the banking system. We, therefore, expect the Banking Court to finally decide this matter in accordance with law within a period of four months from the date of receipt of a certified copy of this order.

8. For the reasons recorded above, we do not find any merit in this petition. It is accordingly dismissed. Leave to appeal is refused.

ISLAMABAD.

03.12.2019.

Zubair/*

'Not Approved For Reporting'

Omme 10/3/20

