

2012 C L D 1637

[Peshawar]

Before Qaiser Rashid Khan, J

SARHAD DALL MILLS HAVELIAN and others---Appellants

Versus

NORTH-WEST FRONTIER PROVINCE (KHYBER PAKHTUNKHWA), SMALL INDUSTRIES DEVELOPMENT BOARD through Managing Director S.I.D.B.--- Respondent

F.A.B. No.13 of 2010, decided on 18th April, 2012.

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

---S. 10---Suit for recovery was decreed ex parte against defendants---Contention of the defendants was that they had filed a suit for declaration pertaining to the same matter, which was pending at the time and that they were not served in the suit for recovery before the Banking Court---Validity---Proceedings in the declaratory suit filed by the defendants against the plaintiff Bank was afoot as seen from the order sheets but no effort worth the name was made to serve them over there and instead after publication in Daily Newspapers with little readership, an ex parte decree was granted against the defendants---Held, such was glaring irregularity committed by the Banking Court while it decreed the suit of the plaintiff Bank while in full knowledge of the pending declaratory suit of the defendants---Decree against the defendants was obtained in surreptitious manner, and it was unsavory and uncanny on part of the Banking Court not to attend to the facts of the other pending suit pertaining to the same monetary controversy between the parties--- High Court set aside decree of Banking Court and remanded the matter to Banking Court---Appeal was allowed, accordingly.

(b) Administration of justice---

---Courts of law were not supposed to display indifference and confine themselves in cocoons where the valuable rights of the individuals were involved.

Sajjad Ahmad Abbasi for Appellants.

Malik Mehmood Akhtar for Respondent.

Date of hearing: 18th April, 2012.

JUDGMENT

QAISER RASHID KHAN, J.---Aggrieved of the judgment and order dated 28-10-2010 of the learned Judge Banking Court, Hazara Division, Abbottabad vide which he dismissed the application of the appellants for setting aside ex parte decree dated 4-8-2007, the appellants have filed the instant appeal.

2. Brier and essential facts leading to the present appeal are that on 8-6-2007 the respondent filed a recovery suit for an amount of Rs.1,283,603.00 against the appellants before the learned Banking Court, Hazara Division, Abbottabad, which was decreed ex parte against the appellants on 4-8-2007, while a declaratory suit filed earlier by the appellants titled Sarhad Dall Mills v. S.I.D.B. was already pending before the said court. In the said suit, the respondent had also filed a leave to defend application, which was allowed. The appellants on coming to know about the ex parte decree filed an application for setting aside the same, to which reply was filed by the respondent and finally the learned ranking Court dismissed the same vide judgment and order dated 28-10-2010, hence the appeal.

3. The learned counsel for the appellants argued that they were not served in accordance with law and procedure; that the learned ranking Court ignored the fact that on 7-12-2006, the learned ranking Court granted leave to defend the suit to the respondent in the other suit titled Sarhad Dall Mills v. S.I.D.B. and on 4-8-2007 when the ex parte decree was

passed against the appellants, the other suit was pending before the learned ranking Court; that the learned Ranking Court while dismissing the application of the appellants for setting aside ex parte decree dated 4-8-2007 committed illegality and irregularity by not considering the mala fide of the respondent board whereby its officials did not bring into the notice of the learned Court the other pending suit of the appellants; that the learned Banking Court failed to consider that in the suit decreed ex parte against the appellants, the respondent claimed to have disbursed an amount of Rs.450,000 in favour of the appellants and in their leave to defend application filed in the other suit, the respondents alleged to have disbursed an amount of Rs.300,000; that the entire claim of the respondent was decreed against the appellants without confirming its veracity even through ex parte evidence.

4. The learned counsel for the respondent in rebuttal argued that the appellants were properly served as per banking law and procedure and on their failure to appear before the learned Court, ex parte decree was passed against them; that the application for setting aside ex parte decree was hopelessly time barred and no cogent reasons were advanced to set aside the same.

5. Arguments of the learned counsel for the parties heard and available record perused.

6. Admittedly, a declaratory suit was filed by the appellants against the respondent before the learned Senior Civil Judge, Abbottabad way back on 16-11-1999 to the effect that out of the sanctioned amount of Rs.650,000 as per sanction advice No.SIDB/RD/ATD/1021 dated 21-7-1996 of the respondent, only a sum of Rs.125,000 was paid to the appellants and thus the recovery notice sent by the respondent for an amount of Rs.516,864 was illegal and liable to be cancelled and that the respondent was bound to pay the entire sanctioned amount to the appellants. The said suit was returned to the appellants/plaintiffs for want of jurisdiction and was then submitted before the learned Banking Court, Hazara Division, Abbottabad on 9-5-2001. The respondent on being served filed an application for the grant of leave to defend the suit on 2-11-2001 and in Para-3 of the said application stated to have paid a sum of Rs.300,000 to the appellants and on account of non-fulfillment of certain conditions, the entire amount could not be released to the appellants. It was after quite sometime i.e., on 7-12-2006 that leave to defend the suit was granted to the respondent/defendant. In the meanwhile, the respondent also filed a recovery suit against the appellants before the learned Banking Court on 8-6-2007 and was decreed on the very next date i.e. 4-8-2007.

7. Little wonder, that whereas the proceedings in the declaratory suit filed by the appellants against the respondent were afoot as gleaned from the order sheets before the learned Court, but no effort worth the name was made to serve them over there and instead after publication in two dailies namely 'Sarhad' and 'Frontier Time' with little readership, an ex parte decree was granted. While sitting in appeal, we cannot shut our eyes to the glaring irregularity committed by the learned Banking Court when it decreed the suit of the respondent while in full knowledge of the pending declaratory suit of the appellants.

Courts of law are not supposed to display indifference and confine themselves in cocoons where the valuable rights of individuals are involved. If on the one hand, the respondent managed to get an ex parte decree in a somewhat surreptitious manner, simultaneously it was also unsavoury and uncanny on the part of the learned Judge, Banking Court not to attend to the facts of the other pending suit pertaining to the same monetary controversy between the parties and instead passed an ex parte decree in favour of the respondent.

8. Thus, for the reasons stated hereinabove, we accept this appeal, set aside the judgment and decree dated 4-8-2007 and direct the learned Banking Court to decide the matter strictly in accordance with law and procedure. The parties are directed to appear before the learned Banking Court, Abbottabad on 2-5-2012.

KMZ/168/P

Appeal allowed.