

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.
Crl. Appeal No. D- 66 of 2018

Before:

Mr. Justice Zafar Ahmed Rajput
Mr. Justice Irshad Ali Shah

Appellant: Industrial Development Bank Limited, a Banking Company set up in pursuance of (Under Companies Ordinance 1984), an Act of 2011, Industrial Development Bank of Pakistan, (Re-Organization and conversion) Act 2011, Under which vesting order was made on 13-11-2012 replacing IDBP having its Registered Head Office of 3rd Floor State Life Building No.2 Wallace Road 1.1 Chundirgar Road Karachi, through its attorney Ashique Hussain son of Allah Bux Memon AVP Incharge Office IDBL Branch Officer Civic Centre, Near PIA Office Thandi Sarak Hyderabad.

Through Mr. Nusrat Hussain J. Memon, Advocate.

Respondents: 1. Abdul Salam son of Abdul Aziz Arain Businessman R/O B-85 SITE Sukkur and Head office at 2151 Green Town Karachi.

2. Azafar Islam son of Abdul Aziz Arain bycaste Businessman R/O B-85 SITE Sukkur and Head Office at 2151 Green Town Karachi.

3. Zahid Islam son of Abdul Aziz.

4. Tahir Islam son of Abdul Aziz.

5. Javed Islam son of Abdul Aziz.

6. Khalid Islam son of Abdul Aziz. (Died)

7. Shahid Islam son of Abdul Aziz.

8. Mr. Najam Shaheed d/o Abdul Aziz.

9. Hameeda Begum wd/o Abdul Aziz. (Died)

All adults, Muslims, Arain bycaste, Resident of House No. 415 Mohalla Bara Alam Gambat, District Khairpur.

Through Mr. Fareed Ahmed Soomro advocate.

10. Bhoora Khan son of Allah Bux Resident of House No. 19 Brohi Mohalla Newpind Sukkur. (Died)

Mr. Karim Bux Janwari, Assistant Attorney General, Pakistan.

Date of hearing: 08-02-2023.

Date of decision: 08-02-2023.

J U D G M E N T

IRSHAD ALI SHAH, J. The facts in brief necessary for disposal of instant Crl. Appeal are that the appellant extended loan to private respondents, for purchase of Locally Manufactured Machinery on execution of Banking documents and mortgaged deed against their property, for repayment of finance or fulfillment of obligation by them, such property they rent out to someone else to be used by him as ware house, without consent of the appellant and/or redeeming mortgage clearance of the loan, contrary to the terms of mortgage deed. It was in these circumstances, the appellant filed a Direct Complaint for prosecution of the private respondents for committing offence under Section 20 of the Financial Institutions (Recovery of Finances) Ordinance 2001, it was dismissed by learned Judge Banking Court-I, Sukkur vide order dated 20-04-2018, which is impugned by the appellant before this Court by way of instant Crl. Appeal.

3. It is contended by learned counsel for the appellant that learned trial Court has dismissed the Complaint of the appellant by way of impugned order in summary manner with non speaking order, without giving any weight to the documentary evidence, therefore, such order being illegal is liable to be set aside by this Court by way of instant Crl. Appeal.

4. Learned Assistant Attorney General, Pakistan did not support the impugned order, however learned counsel for the private respondents by supporting the impugned order has sought for dismissal of instant Crl. Appeal by contending that civil litigation on same cause has already attained finality.

5. Heard arguments and perused the record.

6. The reasons which prevailed with learned trial Court for dismissing the direct complaint of the appellant were (i) It was filed through attorney, which can be filed under Banking Law (ii) The address of the private respondents is incorrect. If it was incorrect then the appellant could have been called upon to correct it (iii) The Civil litigation between the parties is pending. It is settled by now that civil and criminal litigation could proceed side by side on same cause (iv) No penal section is disclosed in complaint for, which the private respondents may be charged. It is disclosed in very beginning of the direct complaint. None of the reason assigned by learned trial Court for dismissal of the complaint of the appellant is appearing to be justified. Consequently, the impugned order is set aside with direction to learned trial Court to make further inquiry into the case and then to pass an appropriate order in accordance with law.

7. The instant Crl. Appeal is disposed of accordingly.

Judge

Judge

-

-

Nasim/P.A