

are words of widest significance and do not limit the jurisdiction of the Court to any case. It is a question of fact and each case must depend on its circumstances.

The whys and wherefores lead to the conclusion that the petitioner has raised lawful grounds for winding up of respondent company and there is no opposition. I am of the view that it would be just and equitable that Company should be wound up. The application is allowed. Let the respondent company be wound up. Official Assignee of the Court is appointed official liquidator. He shall submit preliminary report in terms of Section 329 of the Companies Ordinance 1984 and will be paid fee in accordance with Rule 820 of Sindh Chief Court Rules (O.S).

Application allowed.

**S B L R 2011 Sindh 298**

**[High Court of Sindh (Karachi)]**

*Present: Muhammad Tasnim, J*

Muzaffar E. Sufi---Plaintiff

versus

M/s. First Women Bank Limited & others---Defendants

Suit No. B-53 of 2009

**A) Financial Institutions (Recovery of Finances) Ordinance, 2001---Section 7(2) & 9---Civil Procedure Code (V of 1908)---Order I Rule 10 & Order XI Rule 6---**Under section 9 of Ordinance of 2001, 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 the Banking Court by presenting a plaint---Contention that in provisions of Order I Rule 10 & Order

XI Rule 6 there was no bar of joinder of other parties apart from Financial Institution & the Customer, held; reference to the provisions of Civil Procedure Code, in the circumstances, was misplaced as the present suit had been filed under the Banking Jurisdiction under Ordinance, 2001, which provides a procedure under its Section 9. Provisions of CPC are applicable in the Banking Suit, where such enactment is silent---Since Section 9 of Ordinance, 2001 provides procedure & joinder of defendant Nos. 2 & 3 was in violation of provision of section 9(1) of Ordinance, 2001, their presence in the proceedings was unnecessary. Their names were ordered to be deleted from the array of defendants.

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Mr. Emadul Hassan, Advocate for the plaintiff.

Mr. Jam Asif Mehmood, Advocate for the defendants-1&2

Mr. Naheed A. Shahid, Advocate for the defendant-3.

Date of hearing: 10<sup>th</sup> November, 2010

## ORDER

1. This contempt application shall be heard and decided alongwith main suit.
2. With the assistance of learned counsel for the parties, following issues are framed:
  1. *Whether the suit is maintainable in its present form?*
  2. *Whether the defendants charged the mark-up as offered by them?*
  3. *Whether the defendants behaved responsibly as per the good banking practices as enumerated in various regulations issued by State Bank of Pakistan from time to time?*

4. *Whether the defendants are justified in encashment of the plaintiff's valuable securities for the meager disputed amount?*
5. *Whether loss occurred to the plaintiff due to early and abrupt encashment of securities?*
6. *Whether the cause of action against other defendants in the same as against the defendant No. 1 hence this Hon'ble Court has jurisdiction to try any party concerned with the same cause of action?*
7. *Whether the defendant No. 2 & 3 are necessary parties to properly adjudicate the matter i.e. to establish the bad and unethical banking practice committed by the defendants?*
8. *Whether the defendants are liable to pay damages caused to the plaintiff?*
9. *What should the decree be?*

List of witnesses within seven days.

At the request of learned counsel for the parties Mr. Abbad-ul-Hasnain Advocate, Office # 301, Light House Centre M.A. Jinnah Road, Karachi is appointed Commissioner to record evidence of the parties. Fee of Learned Commissioner shall be Rs. 10,000/- per witness, which shall be borne by respective parties for their respective witnesses. Parties are free to lead their evidence by filing affidavit-in-evidence alongwith original documents, on which they intend to rely. Learned Commissioner shall not grant adjournment to any party more than once and all subsequent adjournments shall be subject to payment of cost of Rs. 10,000/-, 50% of such cost shall be retained by learned Commissioner and other 50% shall be deposited in the account of High Court Employees' Benevolent Fund. Commission shall be returned within six months from the date of order of this Court.

Learned counsel for defendants submit that defendants No. 2&3 have been added unnecessarily in this proceedings as they cannot be joined as defendants in Banking Suit. My attention has been invited to provisions of Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (hereinafter called "Ordinance 2001"), which provides procedure of Banking Courts, subsection 1 whereof is quoted hereunder:

*"(1) 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 the Banking Court by presenting a plaint which shall be verified on oath in the case of a financial institution by the Branch Manager or such other officer of the financial institution as may be duly authorized in this behalf by power of attorney or otherwise."*

The perusal of above quoted provision would indicate that where a customer or as 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 the Banking Court by presenting a plaint.

Subsection 1 of section 9 of the Ordinance, 2001 provides that either the customer or Financial Institution may bring the suit before the Banking Court. In view of the matter, learned counsel for defendants say that defendants No. 2 & 3 be deleted from the array of defendants and matter may be proceeded against defendant No. 1 only, who is Banking-Company/Financial Institution. A

On the other hand learned counsel for plaintiff has submitted that there is no bar of joinder of other parties apart from the Financial Institution and the Customer. He in support of his contention has invited my attention to the provision of Order 1 Rule 10 C.P.C., as also Order II Rule 6 C.P.C.

The reference to the provisions of Civil Procedure Code, in the circumstances, is misplaced as the present suit has been filed under the Banking Jurisdiction under Ordinance, 2001, which provides a procedure under Section 9 of the Ordinance, 2001. Provisions of Civil Procedure Code are applicable in the Banking Suit, where such enactment is silent. Reference can be made to subsection 2 to Section 7 of Ordinance, 2001.

Since Section 9 of the Ordinance provides procedure and joinder of defendants No. 2 & 3 is in violation of provisions of subsection 1 of the Section 9 of the Ordinance, their presence in the present proceedings is unnecessary. Accordingly office is directed to delete the names of the defendants No. 2 & 3 from the array of defendants with RED INK.

Order accordingly.

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**S B L R 2011 Sindh 302**

**[High Court of Sindh (Karachi)]**

*Present: Bhajandas Tejwani & Nisar Muhammad Shaikh, JJ*

**The State---Appellant**

**versus**

**Taj Muhammad---Respondent**

**Crl Acquittal Appeal No. 143 of 1999 decided on 11<sup>th</sup> March, 2010.**

**A) Appreciation of Evidence---**Accused had been implicated on the basis of his taxi car, the number of which allegedly noted at the spot was then traced out & found to have been owned by the accused---It does not appeal to a prudent mind that the culprit while committing a pre-planned robbery would use his own taxi car with its actual registration number etc. so that every one may note the same to facilitate police to trace it out very easily. It was