

**Judgment Sheet**

**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR.**

***JUDICIAL DEPARTMENT.***

**JUDGMENT**

**FAO No.133-P/2022 with CM 152-P/2024.**

**Date of hearing 08.03.2024**

**National Bank of Pakistan and others.**

**Versus**

**M/s Premier Sugar Mills and Distillery Company  
Mardan.**

**Appellant (s) by:            Mr. Kashif Zaman  
Advocate alongwith  
Mehmooda Gul,  
Litigation Officer.**

**Respondent(s) by:        M/s Issac Ali Qazi,  
MaqsoodAli and  
Khushnuma  
Advocates.**

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**WIQAR AHMAD. J.** Through instant appeal, appellant has challenged the impugned order dated 07.12.2021, passed by learned Executing Court (Civil Judge-I, Peshawar), whereby objection petition filed by appellant was dismissed.

2. As per contents of instant appeal, respondent company filed execution petition for satisfaction of judgment and decree dated 29.11.2019, before learned Executing Court Peshawar. During

pendency of same, appellant filed an Objection Petition against judgment and decree dated 29.11.2019, by raising various legal and factual objections regarding maintainability of said decree. Respondent filed reply to objection petition. After hearing the parties, learned Executing Court dismissed objection petition of appellant vide impugned order dated 07.12.2021. Aggrieved from same, appellant has filed instant appeal.

3. Arguments heard and available record perused.

4. Perusal of record reveals that while filing objection petition, appellant had raised a question relating to lack of jurisdiction of civil Court before the



Executing Court, which was dismissed for two reasons viz that such question could not be re-agitated before an Executing Court and secondly that appellant had not deposited the decretal amount in Court before filing of

objection petition, as required under Order 21 Rule 23-A CPC.

5. While raising objection as to jurisdiction of the Court, learned counsel for appellant contended that the matter was falling in the jurisdiction of Banking Court therefore civil Court lacked jurisdiction to entertain the suit. He also placed reliance on the judgment dated 10.10.2023 of this Court passed in Writ Petition No.1391-P/2014 and contended that Executing Court can refuse execution of a decree if same is nullity in the eyes of law or passed without jurisdiction.

6. In response, learned counsel representing the respondent submitted that respondent, who was plaintiff before the Court below, was neither falling in the definition of Financial Institution nor a borrower and therefore, he could not have approached the Banking Court.

7. This Court would first address arguments of learned counsel for the appellant that the decree had been passed by

learned civil Court without having jurisdiction and was therefore a nullity in the eyes of law. Appellant has filed **CM No.152-P/2024** alongwith which a number of documents have been annexed. Same is allowed and the documents annexed therewith shall be deemed to be part of record of this case. Perusal of written statement annexed therewith (filed in original proceedings) reveals that objection as to jurisdiction had been raised in clause 'C' of preliminary objection of written statement and therefore an issue had also been framed in the case. Said issue had been decided against appellant by learned civil Court. The appeal filed before this Court had partially been allowed vide order dated 22.09.2011 and the case again had been remanded to learned civil Court for decision afresh. Thereafter decree was passed and same had also attained finality. The question of jurisdiction had remained expressly decided against appellant in the original

proceedings. Appellant was not only precluded from raising said objection again before learned Executing Court but his objection was also not tenable.

8. Perusal of plaint in the original proceedings reveals that original transaction was not that of lending and borrowing but was relating to investment earlier made by respondent in PLS term deposit, basic detail of which is reproduced from Para 4 of the original plaint;

*"4. That the plaintiff allowed Mehran Bank Limited to collect an amount of Rs. 5 million from the accounts of the plaintiff from M/s Muslim Commercial Bank Limited, Mardan and invest the same for a period of 6 months as PLS Term Deposit. Accordingly M/s Mehran Bank Limited, Peshawar collected the amount of Rs. 5 million from Muslim Commercial Bank Limited, Mardan from the accounts of the plaintiff and deposited the same in its Term Deposit on 25.09.1993 for a period of 6 months maturing on 25.03.1994 at profit of 12.50% per annum, however, withholding tax payable to the Income ta Department was to be deducted from the profit at the rate of 10% upon maturity of the Term Deposit."*

The decree had also been accordingly granted to the following effect;

*"25. Though the plaintiff is succeeded in proving the alleged facts, narrated in the body of the plaint yet the question of relief has to be addressed properly. Because the Court is empowered to grant all such relief as the justice of case may demand. Similarly where the plaintiff claimed relief larger than that to which he is found to be entitled, the Court ought to grant the relief to which he is so found entitled (P 1976 SC 785).*

*26. It is in the heading of the plaint that payment of Rs. Five million with profit of 12.50% per annum with effect from 25/09/1993 till date of final payment may be made. Such other relief appropriate is also asked in alternative. Plaintiff failed to adduce any type of evidence wherefrom it can be determined that why 12.50% interest be paid to him. Similarly ratio of markup changes time to time. Further that the TDR of the plaintiff was based on profit and loss saving (PLS) account and Mehran Bank Limited was collapsed. Meaning thereby that there was no profit at all and plaintiff is supposed to be share holder in loss as well. This is why his date of maturity of TDR is extended to 1999 for the reason that the National Bank of Pakistan was assigned the duty of payment of creditors of the Mehran Bank Limited in 1999*

*after getting free financial assistance from State Bank of Pakistan. Resultantly, the date of maturity of the TDR of the plaintiff which is 1994 be considered 1999 as the account of the plaintiff is based on PLS and fall down of Mehran Bank Limited was obviously loss rather profit. This is worth mentioning that the amount of TDR was lying with the National Bank of Pakistan since that fixed date of maturity (fixed by Court) i.e, 1999 so far without fault of plaintiff. Therefore this is in the fitness of things as well as demand of justice of the case to pay that very amount of TDR on agreed term to the plaintiff on the basis of prevailing market rate of the gold. To be more certain, the amount of TDR on agreed term which was to be paid on prevailing market rate of the gold. To be more certain, the amount of TDR on agreed term which was due to be paid in 1999 is ordered to be paid on prevailing market rate of the gold as to compensate the plaintiff and to redress his objection of devaluation of PKRs (currency) and inflation."*

9. The decree had only been modified subsequently to the extent of giving profit in terms of increase in gold price while rest of decree had attained finality. The modification was made by appellate Court vide order dated 29.11.2019


by granting a decree in terms of prayer "A" of the plaint and respondent was directed to recover Rupees five Millions with profit at the rate of 12.50% per annum from National Bank of Pakistan, for the period given in the judgment. The original transaction was though prior to promulgation of Financial Institutions (Recovery of Finances) Ordinance 2001(hereinafter referred to as Ordinance 2001) but the ordinance had been promulgated during pendency of suit and Section 29 of the Ordinance 2001 repealed the Banking Companies(Recovery of Loans, Advances, Credits and Finances) Act 1997 therefore, the Ordinance being procedural law would be deemed applicable to proceedings therein to the extent of regulating of procedure as well as jurisdiction of the Banking Court. Sub-section 1 of Section 9 of the Ordinance was providing that where a customer or a financial institution committed a default in fulfillment of any obligation with regard to



any finance, the financial institution or, as the case might be, the customer, may institute a suit in the Banking Court by presenting a plaint which would be verified on oath, in the case of financial institution by the Branch Manager or such other officer of the financial institution as might be duly authorized in this behalf by power of attorney or otherwise. The word "customer" has been defined in clause "C" of Section 2 of the Ordinance 2001 as follows;

***(c) "customer" means a person to whom finance has been extended by a financial institution and includes a person on whose behalf a guarantee or letter of credit has been issued by a financial institution as well as a surety or an indemnifier."***

As per abovementioned definition customer would mean;

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- (a) a person to whom finance has been extended by a financial institution***  
***(b) includes a person on whose behalf a guarantee or letter of credit has been issued by a financial institution as well as a surety or an indemnifier."***

10. Respondent (plaintiff) being investor in the Bank by way of purchase of Term Deposit Certificates, cannot be termed person to whom finance had been extended by the financial institution. He was also not a person on whose behalf the Bank had issued any guarantee or letter of credit. He was not falling in the definition of customer and therefore he could not have knocked at the door of Banking Court. Hon'ble Lahore High Court (Multan Bench) while giving its judgment dated 24.02.2022, in FAO No.49 of 2008 has also concluded, on the basis of existing case law, on the subject, that;

*"15. A customer operating a locker with a banker does not obtain a finance ( as defined in Financial Institutions (Recovery of Finances) Ordinance 2001) while the jurisdiction of a Banking Court is limited to a dispute arising out of a finance facility between a customer and a Bank, hence, a banking Court cannot adjudicate the dispute of a bank's liability regarding theft from its lockers under the jurisdiction conferred by Financial Institutions (Recovery of Finances) Ordinance 2001."*

Similarly this Court while giving its judgment in FAB No.1-D of 2021, has also held;

***“11. Admittedly, the appellant has neither availed any finance facility from the Bank nor he is customer of the bank within the contemplation of section 2 (c) of the Recovery Ordinance, therefore, he cannot make recourse to the provisions of Section 9 of the said Ordinance for the redressal of his grievance. In-fact the appellant is an account holder of the Bank and, according to him, his amount has been misappropriated from his account, and this allegation is encompassed in the scheduled offences as enumerated in the ‘the Offences in Respect of Banks (Special Courts) Ordinance, 1984’ and he can seek remedy for the redress of his grievance within the framework of the Ordinance of 1984.”***

From the above discussion, it is clear that the original decree was neither nullity in the eyes of law nor it was passed without having jurisdiction therefore, same could not be challenged in the execution proceedings on the ground on which the objection petition had been filed. The Executing Court in the

given circumstances could not go beyond the decree and reliance in this respect may also be made on the judgment of Hon'ble Supreme Court of Pakistan rendered in case of **"Irshad Mashi Vs Emmanuel Masih"** reported as **2014 SCMR 1481**.

11. The objection petition was therefore totally ill-conceived, which was also not entertainable for the additional reason that requisite deposit of decretal amount had not been made. Although a surety bond had subsequently been submitted in pursuance to order dated 20.02.2023 in the instant appeal but at the time of passing the impugned order neither the amount had been deposited nor the surety bond executed and on said score also objection petition was not maintainable.

Learned counsel for appellant was heard at length but he failed to make out a case of any illegality or material irregularity in the impugned order of learned Executing Court.

Instant appeal was therefore found lacking

substance and same is accordingly dismissed.

**JUDGE**

*Date of hearing & announcement  
of judgment... ..08.03.2024.*

*Date of preparation and  
signing of judgment ..... 13.03.2024.*

*"A.Qayum PS" (SB) Hon'ble Mr. Justice Wiqar Ahmad.*