

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

First Appeal Banking No.01-D/2021

Sanaullah Khan

VERSUS.

**National Bnk of Pakistan through
President & others**

For Appellant: M/S Aamir Khan and Muhammad Iqbal
Khan Kundi Advocate.

For respondents: Nemo (motion case).

Date of hearing **13.04.2022**

JUDGMENT



MUHAMMAD FAHEEM WALI, J.- Sanaullah Khan, the appellant, through this appeal filed under Section 22 of the Financial Institutions (Recovery of Finance) Ordinance, 2001, has called in question the vires of judgment dated 18.02.2021, rendered by the learned Judge Banking Court -II, Peshawar, in case No.06/1 of 2018, whereby the plaint stood returned to the plaintiff for seeking remedy before proper forum.

2. Facts forming factual canvas of the instant appeal are that the appellant has been maintaining a salary account with National Bank of Pakistan, Cantonment Branch, D.I.Khan. On 19.10.2017, the appellant tried to withdraw amount of Rs.20,000/- through ATM Card but the amount was not dispensed to him; the appellant contacted the Bank's Helpline but with no fruitful result; and thereafter, it was informed by the bank officials that an amount of Rs.40,000/- has been withdrawn from the account of appellant through two composite transactions but the limit of the card of appellant was only 20,000/-, and as such, his amount was misappropriated by the bank officials. The appellant thus, filed a suit within the contemplation of Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 to get the said amount recovered from respondents.



3. The suit of appellant was processed by the learned Judge Banking Court. Defendants No. 5 & 6 were granted leave to defend the suit, and they filed application for rejection of plaint under Order VII Rule 11 of CPC. Appellant filed his reply thereto, and the learned Judge Banking Court, upon hearing parties, returned the plaint to appellant for seeking remedy before proper forum as the matter did not fall within the jurisdiction of Banking Court under the provisions of Financial

Institutions (Recovery of Finances) Ordinance, 2001. Hence, the instant Banking Appeal before this Court.

4. Arguments of the learned counsel for appellant have been heard at length and record perused with his able assistance.

5. It is the matter of fact, as disclosed by the appellant, that his salary amount Rs.40,000/- was misappropriated through two composite transactions via ATM despite the fact that the limit of his ATM Card was Rs.20,000/- and also that while transacting an amount of Rs.20,000/-, the ATM machine had not dispensed him the amount. Appellant alleged that his amount was misappropriated by the officials of respondent/bank, for which he filed a suit under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the Recovery Ordinance), which was returned to the appellant for seeking remedy before proper forum as the Banking Court was lacking the jurisdiction to try the suit under the given enactment to resolve the dispute between the financial institution and the account holder.

6. Now the question before this Court is, "*whether the Banking Court was having the jurisdiction to try the suit of appellant filed under the Recovery Ordinance for recovery of amount allegedly misappropriate from his account?*" Suffice it

to say that the government in order to ensure speedier recovery of the finances advanced by the financial institutions and to make the banks recovery law more effective, enacted “Financial Institutions (Recovery of Finances) Ordinance, 2001” (Recovery Ordinance). The preamble of the Recovery Ordinance is though not its operational part but it provides the intent and purpose of a legislation on the subject and also sheds clear light on the goals which the legislator aimed to secure through the introduction of such law. The preamble of a statute, therefore holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law. The august Supreme Court of Pakistan in the case of “*Director General, FIA and others vs. Kamran Iqbal and others*” (2016 SCMR 447) laid down the similar principle by holding that:

“indeed, preamble to a Statute is not an operative part thereof, however, as is now well laid down that the same provides a useful guide for discovering the purpose and intention of the legislature.”


7. The preamble of the Recovery Ordinance, 2001, reads as under:



WHEREAS it is expedient to repeal and with certain modifications, reenact the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997, for the purposes hereinafter appearing;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999 and Provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:

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8. The above extracted preamble clearly provides that the same was enacted to expedite the process of stuck-up loans from the unscrupulous customers/debtors of the banks. Hon'ble Lahore High Court held in reported judgment titled "*Faysal Bank Vs. Justice of Peace, etc*" (PLJ 2013 Lahore 530):

“...Object in enacting Banking Laws was to provide speedy remedy at one forum to Banks for recovery of their finances and for customers of Banks to approach same Court in case of grievance against Banks.”

9. Evidently, the appellant filed suit under Section 9 of the Recovery Ordinance, whereas, the said section in unequivocal words provides that the same is meant for the disputes between the customer and financial institution. Section 9(1) *ibid* being relevant is re-produced hereunder:

9. PROCEDURE OF BANKING COURTS.
(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.

(Underline is our emphasis)

10. The terms '*financial institution*' and '*customer*' as used in the above extracted provision have been defined in clause (a) and (c) of Section 2 of Recovery Ordinance. According to clause (a) the financial institution means and includes any



company whether incorporated within or outside Pakistan which transacts the business of banking or any associated or ancillary business in Pakistan through its branches within or outside Pakistan and includes a government savings bank, but excludes the State Bank of Pakistan; or a modaraba or modaraba management company, leasing company, investment bank, venture capital company, financing company, unit trust or mutual fund of any kind and credit or investment institution, corporation or company; and any company authorised by law to carry on any similar business, as the Federal Government may by notification in the official Gazette, specify. Whereas, the term "customer", as defined under Section 2(c), means a person to whom finance has been extended by a financial institution within or outside Pakistan 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.



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 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.

12. The appellant being stepped in the wrong forum under the provisions of Recovery Ordinance, where there was no dispute of extending any finance facility, the answer of our question as framed hereinabove, is in negative, and as such, plaint was rightly returned to the appellant by the leaned Judge Banking Court for seeking remedy before the proper forum.

13. In nutshell, the instant appeal is devoid of merits, hence, dismissed in *limine* with no order as to cost.

Announced.
13.04.2022.

(*M/Subhan)


JUDGE


JUDGE

(D.B)
Hon'ble Mr. Justice Shakeel Ahmad and
Hon'ble Mr. Justice Muhammad Faheem Wali


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