

# **HIGH COURT OF AZAD JAMMU & KASHMIR**

Civil Appeal No.171/2022.  
Date of institution 15.08.2022.  
Date of decision 12.10.2023.

Zohra Bibi Maroof wife of Mohammad Maroof Caste  
Jatt r/o Dhangri Bala Tehsil & District Mirpur.

Appellant

VERSUS

1. Habib Bank Ltd. Through President Habib Bank Ltd. Habib Bank Plaza II Chandreegar Road Karachi;
2. President Habib Bank Ltd. Habib Bank Plaza II Chandreegar Road Karachi;
3. Group Head Habib Bank Ltd. Habib Bank Plaza II Chandreegar Road Karachi;
4. SRC Habib Bank Ltd, Region Mirpur Bank Square Nangi Mirpur;
5. Habib Bank Ltd. Through Manager Habib Bank Ltd. Main Branch Chaksawari Tehsil & District Mirpur;
6. Manager Habib Bank Ltd. Main Branch Chaksawari Mirpur Azad Kashmir;
7. Qazi Arfan Mehmood s/o Abdul Majeed Qazi r/o House No.108 Sector E/4 Tehsil & District Mirpur.

Respondents

## **CIVIL APPEAL**

***Before:- Justice Syed Shahid Bahar, J.***

### **PRESENT:**

- Raja Sohail Shamim, advocate for the Appellant.  
Raja Mohammad Taj, Advocate for Respondents No.1 to 6.

**JUDGMENT:**

The captioned appeal has been directed against the decision passed by the learned Additional District Judge Mirpur dated 30.06.2022, whereby, the suit filed by the plaintiff/appellant, herein, was dismissed for want of jurisdiction.

**CHRONOLOGICAL FACTS IN BREVITY.**

The plaintiff/appellant, herein, filed a suit for recovery of Rs.5,50,000,00/- (five Cror and fifty lacs) against the defendants/Habib Bank Ltd. & others before the learned trial Court on the ground that as per agreement dated 01.08.2012, she was entitled to get the supra amount alongwith profit and costs but the Bank while breaching the contract refused to pay the amount as per conditions of contract. On filing the suit, the defendants filed written statement and prayed for dismissal of the suit. In the first round, the appellant approached the civil Court but the suit was returned back to the appellant and she made a second attempt and filed the same suit before the Judge Banking Court which met the same fate and after becoming rolling stone, the appellant ultimately approached the civil

Court/District Judge resultantly, the decision impugned herein, was passed.

2. A perusal of record reveals that plaintiff/appellant firstly filed a suit for recovery of the amount in the Court of District Judge Mirpur which was returned on 21.09.2019 under Order VII Rule 10 of CPC and later on, she filed another suit in the Banking Court which also met the same fate (returned) on 30.08.2021 and thereafter, she also filed a 3<sup>rd</sup> suit before the learned Additional District Judge Mirpur which through the impugned order/decision dated 30.06.2022 was dismissed for want of jurisdiction.

**Ubi Jus Ibi remedium.**

Above fundamental principle of law denotes that where there is a right there is a remedy. Any person having even a slightest right by virtue of said right has a corresponding remedy to institute the suit in a Court unless the jurisdiction of the Court is barred. It is trite law that where a civil Court is not equipped with jurisdiction over the matter suit should have been returned to the plaintiff in view of Order VII Rule 11 CPC instead of dismissal. Under Section 9 CPC, civil Courts

have jurisdiction over all suits of a civil nature unless their cognizance is either expressly or impliedly barred. Instant suit's controversy is pertaining to fixed amount of the appellant and dispute is regarding agreed rate of interest. No loan liability is involved between appellant and respondent Bank, thus, Banking Court has got no jurisdiction to entertain and adjudicate the matter simultaneously, the bar contained in the banking recovery of loan Act does not attract.

3. As adumbrated the plaintiff was not borrower nor had she obtained a loan within the meaning of the financial Institute (recovery of finances) Act 2001. Suit in the above circumstances was maintainable in the civil Court. Suit for damages is not maintainable before the Banking Court as the Banking Court has no jurisdiction to try such suit <sup>1</sup>. Under writing transaction ought not be regarded as finance within the meaning of finance employed in the law <sup>2</sup>. The word "Customer" employed in the above law (hereinafter called Act 2001) is not attracted to plaintiff as the status

---

<sup>1</sup>. Najeebullah Qureshi Vs. Citi Bank 2009 CLC 49

<sup>2</sup>. Allied Bank Vs. Safa Textile 2013 CLC 2022.

of the customer came into being when a finance facility have been extended in favour of a person, thus, Section 9 of the Act 2001 will not come into play to the extent of the plaintiff/appellant as reflecting from Section 9 of the Act, 2001, it is useful to reproduce the same as infra:-

“9. Procedure of Banking Courts. (1). Where a customer or a financial institution commits a default in fulfilment 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 the behalf by power of attorney or otherwise.”

Recovery of damages do not come within the jurisdiction of the Banking Court. All the claims relating to advancement of loan or defaults in fulfilment of an obligation pertaining to any finance is triable by Banking Court. The law has not permitted any other claim to be tried by the Banking Court. Merely being account holders of the Bank/respondents, cannot be considered as customer and the amount allegedly deposited by the

appellant also does not come within the purview of finance.

Similarly, any facility defined in the definition provided by the financial institution cover within the ambit of finance, hence, opening of an account by an account holder and deposition of amount would not be considered as finance<sup>3</sup>.

Therefore, by accepting the appeal in hand, the decision impugned herein is set-aside and suit of the appellant is remanded back to the trial Court with the direction to decide the same in accordance with law. Record of the trial Court be returned back. The file shall be kept in archive.

Appeal stands accepted.

Muzaffarabad.

12.10.2023 (Saleem)

JUDGE

**Note:-** Judgment is written and duly signed. The office is directed to transmit the instant file in a sealed envelope to circuit bench Mirpur and the Deputy Registrar of circuit bench Mirpur is further directed to intimate the parties or their counsel accordingly.

JUDGE

**APPROVED FOR REPORTING**

JUDGE