IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

BEFORE:
MR. JUSTICE MAHMOOD AHMAD KHAN
MR. JUSTICE MUHAMMAD HASAN (AKBER)

1st Appeal No.D-14 of 2022

Appellant:	M/s. Sunny Petroleum Service through its proprietor (since deceased) through his legal heirs, through Mr. Sunder Das Advocate.
Respondent:	National Bank of Pakistan, through Mr. Imran Ali Borano Advocate
Date of hearing:	18.03.2025
Date of decision:	18.03.2025

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- Through instant appeal, legal heirs of the deceased proprietor of M/s. Sunny Petroleum Service (appellants) have assailed the Judgment and Decree dated 29.01.2022 passed by the learned Banking Court No.II at Hyderabad, in Banking Suit No.289 of 2014 whereby suit of the Respondent bank was decreed for a sum of Rs.27,25,763/-along with cost of fund as certified by the State Bank of Pakistan.

2. Facts of the case are that on Appellant's request and after due scrutiny, a Cash Finance Facility to the extent of Rs.18,00,000/- on floating markup basis, was sanctioned by the Respondent in favour of the Appellant on 07-02-2007 along-with markup and other charges. Markup was repayable in quarterly installments while principle amount was repayable till date of expiry viz. 31-12-2007. Such facility was duly availed to the extent of Rs.17,98,572/- on different dates as per arrangements. To secure the Respondent, the Appellant executed the Financial Agreement, Demand Promissory Note, Personal Guarantee, Letter of Hypothecation, Letter of Pledge of goods, Letter of Continuity and Memorandum of Deposit of Title Deeds. To further secure the Respondent, the Appellant mortgaged his property viz. Plot measuring 4355 Square Feet, situated in Ward No.14, Moro Town, Deh Moro, Taluka Moro, District Naushero Feroze, along-with present and future construction thereon vide registered mortgaged deed bearing Registration No.715 dated 17-07-2004 in the office of Sub-Registrar Moro, bearing MF Roll No.13/2622 dated 22-07-2004, Office of Photo Registrar, Nawabshah. Upon failure to repay the amounts due, Banking Suit No.289 of 2014 was initiated against the appellant/ defendant with prayers

for recovery for a sum of Rs.27,25,763/- along with markup and Costs of Fund from the date of default till realization; along with Liquidated damages at the rate of 20%; attachment and sale of the mortgaged property; the decree to be executed under the provision of Land Revenue Act 1967; Cost of the suit; and other relief(s) as deemed fit, just and proper.

3. Application for Leave to Defend the Suit was filed to which Replication was filed on behalf of the Bank. It was claimed in the Leave-to-Defend application that due to eruption of fire at the petrol pump on 27.12.2007, all moveable assets of the appellant were burnt, therefore, they became handicapped to liquidate the finance availed by them as the circumstances were beyond their control due to above natural calamity. The appellants in their leave to defend application also took a plea that in the event of fire, it was the responsibility of the respondent-bank to get the reimbursement/compensation from the Insurance Company as the hypothecated stock goods were got insured at the directions of Respondent. In its Replication, it was claimed by the Bank that the insurance company refused to allow the claim since it was not covered under the insurance policy. Vide Order dated 27-08-2019, Leave to Defend the suit was allowed by the learned Banking Court, where after, the following issues were framed:

> “1. Whether the suit is not maintainable?
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> 2. Whether the plaintiff obtained signatures of defendant on blank printed form of financial agreement, Demand promissory note, personal guarantee, Letter of hypothecation, letter of pledge or goods, letter of continuity and Memorandum of deposit title deeds?
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> 3. Whether the defendant had not committed any default in payment of facility/loan amount and markup/riba?
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> 4. Whether stock was insured by Excel insurance company limited in the sum of Rs.36,00,000/- under fire policy No.1923 dated: 01-02-2007 in the event of loss/damage by fire/strike by burglary?
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> 5. Whether on 27-12-2007 the mob attacked on the shop and godown of the defendant and burnt/damaged and looted the insured property?
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> 6. Whether the defendant gave notices dated: 14-01-2008, 28-01-2008 and 14-04-2008 to the plaintiff and notices on 28-01-2008 and 23-04-2008 to the insurance company?
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> 7. Whether an amount of Rs.36,00,000/- of defendant is outstanding against the plaintiff?
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> 8. What the decree should be?

4. After full-dressed trial and evidence by both parties, the impugned Judgment and Decree were passed in favour of the Respondent bank. The learned counsel for the appellants, besides other technical grounds, has mainly focused his arguments on the plea that the hypothecated stock goods were got insured by the Respondent bank, therefore, the bank was under legal obligation to get the reimbursement and recovery of the outstanding amount from the insurance company. It has been further argued that since the insurance policy was arranged by the respondent-bank on their own accord, therefore, the respondent had to approach the insurance company for recovery instead of filing suit for recovery against the appellants who have discharged their responsibility by informing the respondent. Further pleaded that the appellant had promptly informed the bank about the fire incident but the bank remained silent, paid no heed and failed to file the claim with the Insurance Company. The learned counsel has further contended that while executing the terms and conditions of sanction advise they were not taken into confidence regarding the clause of insurance cover for securing the repayment of finance facility, hence in view of the above factual position i.e. existence of insurance policy;' the respondent- bank has no lawful claim against the appellants.

5. Conversely, the learned counsel for the Respondent has contended that the finance facility was sanctioned subject to the insurance of hypothecated stock goods to doubly secure the repayment of liabilities so also to save the appellants from any kind of loss due to any incident or damage to the hypothecated stock. He further contended that the insurance policy was arranged with the consent of the appellant and such condition was inserted in the sanction advise which has been duly signed by the appellants who have also paid the premium against such policy. Per learned counsel, involvement of the respondent for the insurance of the hypothecated stock goods was to the extent of securing the liability by imposing such condition and to facilitate the customers, otherwise the insurance policy was obtained, the documents were signed and the premium was paid by the appellants themselves. Therefore, per learned counsel, the respondent-bank has no obligation to file claim of the insurance policy with the insurance company whereas the bank is entitled to have the outstanding amount recovered from the appellants, as per the agreement.

6. Heard learned counsels for the parties and perused the record, which reflects that the appellants have admitted the sanction of loan and the execution of finance agreement and other charged documents. None of the documents executed between the parties or relied upon by the respondent have been refuted or denied by the appellants. The disbursement of finance

facility and availing the same is also admitted. Record further reveals that on Issue No.1, the suit was filed by the concerned Manager of the concerned branch of the Bank, who was fully covered under Sub-Section (1) of Section 9 of the Financial Institution (Recovery of Finance) Ordinance 2001.

7. On Issue No.2 also, the Appellant utterly failed to discharge its burden, since neither any complaint was lodged by the customer, nor any evidence was produced to prove that signatures of the customer were obtained on blank printed documents. Suffice it to say that the presence of a registered mortgage deed, a fire insurance policy and the admitted insurance claim by the appellant further negates such a bald plea. Likewise, the learned Banking Court was also fully justified in deciding Issue No.3 after considering the production of chain of documents executed by the customer including the registered mortgaged documents and Statement of Accounts by the Respondent bank, whereas admission of loan but failure to produce any receipt against repayment of loan Appellant's attorney D.W Maqbool Ahmed Soomro.

8. With respect to Issues 4, 5 and 6 which are interconnected, there seems no dispute between the parties on the insurance of the stock with Excel Insurance Company Limited in the sum of Rs.36,00,000/- under fire policy No.1923 dated 01-02-2007. It was next claimed by the appellant that on 27-12-2007 due to death of Shaheed Mohtarma Benazir Bhutto, a mob attacked his shop and godown and burnt, damaged and looted the insured property. Reliance was also placed upon FIR No.01/2008 registered at Police Station Tando Muhammad Khan on 01-01-2008. The claim of the Appellant was that such policy also covered loss in the event of loss/damage by fire/strike by burglary. However, upon perusal of the said FIR it appears that the same was lodged by one Muhammad Ishaque, who according to the Appellant, was his cashier. Surprisingly, the said complainant/ cashier was not even produced in evidence as a witness, especially when he was not a party to the suit and the attorney of the Defendant/ Appellant was not his attorney. Additionally, during his cross examination, the sole witness/ attorney for the Appellants stated that an official of the Deputy Commissioner Tando Muhammad Khan had given a report in respect of the damage in the said incident, however no such report was produced in evidence. It was also admitted during his cross examination that no documents to establish the alleged loss of Rs.4 million or as allegedly assessed by the DC were produced in evidence. However, the same could not be established in evidence since no document or witness was produced by the Appellant to establish its claim, except a mere oral assertion by the appellant. Needless to mention that the statements of facts contained in a First Information Report under section 154 Cr.PC. are not gospel truth but the same

are mere statement of facts. Hence for placing reliance on a First Information Report in civil proceedings, the statements of facts contained therein are required to be established, corroborated and proved through positive evidence by the party relying on the same. On the contrary, neither the complainant appeared as a witness, nor any other employee of the Sunny Petrol Pump on the said incident was produced, nor any proof of loss of Rs.4 million was established, nor the purported Report by the DC was produced.

9. It was lastly claimed by the Appellants that notices dated 14-01-2008, 28-01-2008 and 14-04-2008 were addressed to the Respondent Bank and those dated 28-01-2008 and 23-04-2008 to the Insurance company for the insurance claim. As per the appellant, it was the responsibility of the bank to file a suit against the insurance company with respect to the claim lodged by the appellant, and since the bank has failed to file such a suit, the bank is responsible to pay Rs.3.6 million. In his cross examination, Respondent's witness P.W. Abdul Fatah Khilji stated that the Petrol Stock was insured with Excel Insurance Company Limited in the sum of Rs.36,00,000/- and the letter by the customer was received and the same was also forwarded to the Manager of the Insurance Company and in this regard an officer of the insurance company also visited the place of alleged incidents at the petrol pump of the customer, however the Insurance Company refused to allow claim, since the claim was not covered under the policy. As with regards to filing with a suit against the insurance company by the bank, the same has been denied by the respondent on the grounds that it was not the responsibility of the bank to lodge suit against insurance company.

10. The next question before this Court is that, whether in view of the incident of the alleged fire and the Insurance policy, was the Respondent-bank not entitled to claim the outstanding liability/ default amount from the Appellants under the Ordnance 2001? And was the bank under obligation to seek reimbursement of the same against from the insurance company instead? Case law on the subject in Pakistan takes us to the decision in '*Messrs Jan Sher Khan Petroleum Service through Proprietor and another v. Messrs Allied Bank Limited*'[1] wherein it was held that in the absence of any clause in the the insurance policy which could possibly put bank under obligation to file a claim with the insurance company of any outstanding liability of defendants, the bank was not responsible to file such claim on behalf of the customer. In the next case of '*Riaz Ahmad (Rana Riaz Anjum) and another V. The Bank of Punjab*'[2], the fact that Bank applied to the insurance company for realization of insurance claim was held as having no bearing on the recovery suit filed by it against its

customers, which suit was only concerned with the determination of liability against the defendants.

11. In '*Bhatti and others v. United Bank Limited and 2 others*'[3], wherein hypothecated stock was destroyed by fire and the Bank invoked the insurance clause but the insurance company refused the claim challenging the *bona fides* of the fire incident, it was held that the claim under the insurance clause was an independent and separate agreement, which could not be made the basis to restrict the Bank to recover the amount only through the said process, especially when the insurance company had refused to pay the insurance claim on the ground that the incident of fire was a manoeuvred one and the claim was not *bona fide*. Another contention that because of the Act of God, the principal borrower was exonerated from the liability and thus the guarantors stood discharged as sureties/mortgagors, was also repelled by the Court. '*Imran Enterprises through Proprietor and another v. Muslim Commercial Bank through Manager and another*'[4], was the case wherein Mr. Justice Syed Asghar Haider observed that, the right of the Bank to recover the claim against its customer was unimpaired by the insurance policy, and stance of the customer for making recovery from the insurance company in the case of the alleged fire incident in factory of the appellants was rejected. Even leave to defend was not allowed in the said case. It was thus observed that,

> "The pith and substance of the arguments made by the learned counsel for the appellants is that the leave application was not considered properly qua the effect of 'fire breaking out in the factory, and destroying the hypothecated stock, he submitted that the stocks were insured on the insistence of the respondent-Bank with the insurance company of the choice of the respondent-Bank, therefore, recovery ought to be made from the insurance company. Perusal of the insurance policy reflects that the right of the bank to recover claim is unimpaired.
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> Therefore, the stance of the learned counsel that the recovery has to be made from the insurance company is without substance."

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1. 2013 CLD 526
2. 2016 CLD 596
3. 2005 CLD 643
4. 2007 CLD 555

12. In the case of '*Messrs Nawaz Enterprises through Sole Proprietor and another v. Habib Bank Limited and 5 others*'[5] it was held that the theft of the insured machinery would not mitigate the liability of the appellants towards the Bank in respect of the finance in question, despite the fact that the Finance agreement mentioned that machinery shall be insured but nothing in the said agreement envisaged the extinguishment of the liability of the appellants on account of any loss of the machinery whether the same was insured.

13. The settled legal position that an Insurance company was not a customer under Section 2(c) of the Ordinance 2001 and that the Banking Court had no jurisdiction to entertain or adjudicate upon claim against insurance company under a finance agreement, was decided in a number of cases, including '*Adieu (Pvt.) Limited through Directors/ Chief Executives v. Platinum Commercial Bank Limited through President and 3 others*'[6], '*Pakistan General Insurance Company Limited through Executive Vice-President v. Messrs Muslim Commercial Bank Ltd. and 4 others*'[7], '*Messrs United Bank Limited v. Messrs Adamjee Insurance Company Ltd. and 2 others*'[8], '*EFU General Insurance Ltd. through Executive Vice-President v. Chairman, Banking Tribunal No.1, Lahore, and 3 others*'[9], '*Messrs Evergreen Press and 3 others v. Bank of Punjab*'[10], '*Messrs Grace Textile Mills (Pvt.) Ltd. and another v. Habib Bank Limited and 5 others*'[11] and '*National Bank of Pakistan (N.B.P.) and 5 others v. Punjab Road Transport Board through Managing Director and 3 others*'[12]. We also find it important to attend to the facts in the case of '*P.M. Packages and others V. Silk Bank Limited*'[13] wherein Leave-to-defend application was rejected by the learned Banking Court without even addressing the said issue of fire and the claim under the insurance policy. On the contrary, in the present case, Leave-t-Defend was duly granted and a full-dressed trial was conducted and the above aspects were also fully considered, where after the matter was decided vide the Judgment impugned.

14. Applying the above principles to the facts of the present case, the appraisal of documents produced in evidence by the bank clearly reflects that appellants had availed the facility in question. It further establishes that the

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5. 2007 CLD 952
6. 2005 CLD 1781
7. 2015 C LD 600
8. 1988 CLC 1660
9. PLD 2001 Lahore 313
10. 2004 CLD 239
11. 2003 CLD 1685
12. 2003 CLD 653
13. 2019 C LD 713

insurance policy was duly signed by the appellant nor did the appellant point out towards any clause in such policy which could possibly put the respondent bank under obligation to file a claim with the insurance company of any outstanding liability of the appellant in case of default. Even if such a clause did exist, the right of the bank to claim the outstanding liability against its customer is duly protected under FIO, as discussed in the preceding Judgments. The insurance policy was obtained in the name of the company of the appellant No.1 and the entire insurance policy documents were singed and the premium was also paid by the appellants. As per clause of insurance in the sanction advise it was the condition precedent that all the assets of the company and/or personal properties of the partners/directors be charged with the Bank as security for the payment/obligations of company until the facility is fully settled and the assets shall be insured with an insurance company acceptable to the Bank. However, such insurance was meant to cover the risks of fire. It is noted that such insurance policy has been assigned in favour of respondent-bank but nothing has been mentioned in the finance facility about the extinguishment of the liability of the appellants towards bank on account of any loss, whether it was insured or not. The learned counsel for the appellants has also failed to point out any such condition, either in the sanction or in the terms and conditions of the insurance policy which absolved them from discharging their liability of payment of outstanding amount to the respondent-bank. In the circumstances it appears that the condition of insurance of hypothecated stock goods was imposed only to doubly secure the liabilities of the bank in addition to the execution of other security documents including the mortgage deed of the properties against the finance facility provided by the respondent.

15. In view of the above discussed facts, circumstances and legal position, we did not find any merits in the instant appeal, which was accordingly dismissed by our short order dated 18.03.2025. These are the reasons for the short order, which was as follows:

> "After hearing learned counsels for the parties at length, we do not find any merits in the instant appeal. Hence, for reasons to follow, the Appeal is dismissed, with no order as to costs."

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