IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.339 of 2005

[Television System and Research (Rentals) Ltd. & another *versus* **Pakistan Services Limited]**

Present:
Mr. Muhammad Faisal Kamal Alam, J.
Ms. Sana Akram Minhas, J.

Date of hearings	:	08.08.2025 and 08.09.2025.
Appellants	:	Television Systems and Research (Rentals) Limited and another through Mr. Hassan Ali, Advocate.
Respondent	:	Pakistan Services Limited through Mr. Zahid F. Ebrahim, Advocate.

J U D G M E N T

***Muhammad Faisal Kamal Alam, J.*:** Through this High Court Appeal, the Appellants have challenged the Judgment and Decree dated 05.04.2005, whereby, Suit filed by both the Appellants was dismissed, along with the Counter Claim of Respondent.

2. Mr. Hassan Ali, learned Counsel appearing for the Appellants, states that under the Agreement [Exhibit-5/1], *inter alia,* TSR Centralized In-House Movie System was to be installed and Equipment were to be delivered to the Respondent-Company for its different Hotels in Pakistan. Respondent defaulted in making timely payments; only £16,380/- [Sixteen Thousand Three Hundred Eighty only] was paid [*as acknowledged under Paragraph-14 of the Plaint*]. Due to representation and commitment of Respondent, Appellant No.1 [United Kingdom based Company at the relevant time] obtained finance facility from Appellant No.2 – United Bank Limited, but owing to the default of Respondent, said payment could not be

made to the Appellant No.2 by the Appellant No.1. Due to breach of contractual terms on the part of the Respondent, the Appellants suffered losses. Contends that the impugned Judgment has erred that the Suit is time barred, because in terms of Article 120 of the Limitation Act, six years' time is prescribed for filing proceeding of the nature. Has referred to Exhibit-5/2 dated 09.03.1977, which is Correspondence of Respondent to Appellant No.2, giving its consent to advance loan to the Appellant No.1, as the latter will be providing equipment for the Hotels of the Respondent. Argued that the relationship between the two Appellants is also wrongly determined in the impugned Judgment. Referred to Exhibits-5/7, 5/8 and 5/9, which are Certificates of Acceptance on behalf of the Respondent, that part shipment of the Equipment/ Consignment was found to be in order and installed in the Hotels, but despite this, Respondent failed to pay Rentals as required under the Agreement; that evidence was not properly appraised by the learned Single Bench, resulting in the impugned Judgment and Decree, which is to be set aside and the Suit be decreed.

3. On the other hand, Mr. Zahid F. Ebrahim, Advocate, representing the Respondent, has supported the impugned Judgment and rebutted the arguments of the Appellants' Counsel. Has referred to the point of limitation as specifically determined in the Impugned Judgment; contends that after the liquidation of the Appellant No.1, the Entity does not exist and no one else has come forward either its Successor or Liquidator, which means that the claim of the Appellants has been frustrated. Has denied that any privity of contract existed between the Appellant No.2 – Bank and Respondent and the latter is not liable for any payment to the Bank.

4. Arguments heard and record perused.

5. Both Subject Agreements [Exhibit 5/1 and 5/6] are undisputed relating to supply of, *inter alia*, TSR Centralized TV and In-House Movie distribution system on payment of yearly rental.

6. The points for Determination in this Appeal are as under_

i. Whether the Claim of the Appellant No.1 can be accepted / awarded?

ii. Whether any disbursement of loan happened and there is any privity of contract between Appellant No.2 and Respondent?

7. Mr. Tariq Hamid, representative of Appellant No.2 led the evidence on behalf of both the Appellants, *whereas*, one Mansoor Akbar Ali testified on behalf of Respondent. Testimonies are considered.

8. To a question, the P.W.-1, has stated that there is no relationship between the Bank and Appellant No.1; acknowledged that he does not know about shareholders of Plaintiff No.1 / Appellant No.1; could not disclose the names of other customers to whom equipment were supplied by Appellant No.1; admitted that Appellant No.1 does not / did not have a loan account with Appellant No.2 at its London Branch; could not produce the Statement of Account to show that how much amount towards loan was in fact disbursed and recovered; **admitted** that the Appellant Bank never demanded repayment of loan from Appellant No.1. Admitted that no guarantee document was produced by the said Witness during evidence to show that loan was given. Has replied in affirmative to a question that '***It is correct to suggest that the defendant has not authorized plaintiff No.2 to make payment to plaintiff No.1***.'

9. Similarly, testimony of Respondent's Witness has been perused, in which he has denied the supply of Equipment / System so also loan amount to the Plaintiff No.1 / Appellant No.1 and issuance of the above Certificate. In response to his [Respondent Witness] elaborated Affidavit-in-Evidence,

no other question was put and it is settled rule that if material assertion either in examination-in-chief or in affidavit-in-evidence is not challenged in cross-examination, it is deemed to be admitted by the opponent [in the present case, present Appellants]. For instance, it is specifically stated in the Affidavit-in-Evidence [examination-in-chief], that '*the Defendant on its own purchased, installed, connected and commissioned a comprehensive television, radio and video system for its hotel premises at its own expenses as TSR Limited and the Plaintiff No.1 failed to live up to its obligations. In fact, the Plaintiff No.1 was fully aware of its inability and failure to perform its obligations under the Agreements and therefore abandoned the same and ceased all correspondence and contact from 1980 to 1985*'.

The above material assertion was never challenged in cross-examination and hence this crucial fact going to the root of the controversy, has been admitted by the Appellants. Relevant case law is_

i. **1991 SCMR 2300**
[*Mst. Nur Jehan Begum through Legal Representatives* ***versus*** *Syed Mujtaba Ali Naqvi*]; and

ii. **P L D 2004 Supreme Court 633**
[*Islamuddin and others* ***versus*** *Ghulam Muhammad and others*].

10. During proceeding, the Respondent's Counsel has filed a Statement, under which the Official Record of the Companies House at United Kingdom has been produced. According to the Certificate issued under Companies Act 2006 (Section 1000), the Appellant No.1 has been struck off from the Register and the 'Company will be dissolved'. This fact although has not been disputed by the Appellants' Counsel, but he has stated that claim is still valid, and as if this Appeal is allowed, the pro rata amount of Decree will be transmitted to the Crown. We are unable to agree with this argument, as no one has come forward on behalf of the Appellant No.1 for its replacement, either by any other entity or government functionary. A non-existing Entity [present Appellant No.1] cannot

maintain a Proceeding of the nature and/ or acquire a Decree. Thus, the Claim cannot be awarded. Relevant case law is_

i. **2002 C L D 286**
[*Director Industries, Government of N.-W.F.P., Peshawar* ***versus*** *Messrs Nowshera Engineering company Limited through Managing Director and 4 others*].

11. The case law cited by the Appellants' Counsel is not relevant. It is cited in support of the proposition that limitation period of six years will be applicable in the present case in terms of Article 120 of the Limitation Act; and documentary evidence excludes the oral testimony in terms of Articles 103 of the Qanooon-e-Shahadat Order, 1984.

Article 120 of the Limitation Act [*as relied upon by the Appellants' Counsel*] only applies, when there is no limitation period is mentioned. However, the above provision is not applicable to the facts of the present case, because for recovery of rent the prescribed limitation is mentioned in Article 110, which is three years. In terms of the subject Agreements, date of commencement for payment of annual rentals is to start after seven days from the installation of the Equipment [Clause-2]. Even if the Exhibits 5/7, 5/8 and 5/9 are accepted as the authentic documents, which are Certificates of Acceptance of Equipment [although disputed by the Respondent], these Certificates / Documents bear dates of 29.07.1979, 04.10.1979 and 10.02.1980, and therefore, the Suit should have been filed within three years, that is, latest by 09.02.1983, but admittedly it is instituted on 07.08.1986, hence, the Decision of the learned Single Bench is correct that the Suit is time barred.

12. No evidence has been brought on record by the Appellants' witness, that the alleged loan has been disbursed to the Appellant No.1, in view of the deposition of its Witness [as discussed in the foregoing paragraphs]. The overall evidence does not support the stance of the Appellant No.1

with regard to supply of the entire consignment of System / Equipment to the Respondent. However, partial payment was already made as admitted in Paragraph-14 [***supra***].

13. The reply to the above Points for Determination is that_

i. Appellant No.1 has failed to prove its Claim.

iii. Appellant No.2 has failed to prove giving any loan facility to Appellant No.1, besides, no privity of contract established between the Appellant No.2 and the Respondent.

14. Conclusion of the above is that no interference is required. Impugned Judgment is maintained and this Appeal is dismissed along with all pending application(s), if any, but with no order as to costs.

Judge

Judge

Karachi.
Dated: 08.09.2025.

Riaz / P.S