PRESENTED ON....04-03-2023
ADDITIONAL REGISTRAR

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Banking Appeal No. D-6 Of 2023

M/s Sehwani Cotton Ginners,
Partners/Guarantors/Owner of the property
in the personal capacity.

1. Namchand S/o Bakhsho Mal (Partner/Owner/Guarantor),
R/o Sarafa Bazar Daharki, Taluka Daharki,
District Ghotki.

2. Amar Lal S/o Mohan Dass (Partner/Owner/Guarantor)
R/o H.No.365, 66, Mohallah Mithoo Mal Daharki,
Taluka Daharki, District Ghotki.

3. Udhastar Lal S/o Kanya Lal (Partner/Owner/Guarantor)
Rr/o Kirshan Colony Dharki, Taluka Daharki,
District Ghotki.

4. Altaf Hussain S/o Qadir Bux (Grower)
R/o Village Kunji Chak No.204,
Taluka Daharki, District Ghotki.

5. Preetam Lal Ss/o Jonta Ram (Grower)
R/o Manghwar Mohallah Daharki,
Taluka Daharki, District Ghotki.

6. Kirshan Lal S/o Rakhoo Ram (Grower)
R/o Village Jarwar Mirpur Mathelo,
Taluka Daharki, District Ghotki.

7. Mukesh Kumar S/o Bhagwan Dass (Grower)
R/o Ameer Bux Colony Daharki,
Taluka Daharki, District Ghotki. .....***APPELLANTS***

Versus

1. M/s National Bank of Pakistan,
A Banking Company incorporated under
Nation Bank of Pakistan Ordinance XIX of 1949,
Having its Head Office at National Bank of Pakistan
Building I.I Chundrigar Road Karachi, one of its
Branch known at Daharki Branch, through its duly
Authorized office Manager/Attorney.

2. Banking Court No.II Sukkur.

3. Bashir Ahmed S/o Kareem Bux,
By caste Mahar, (Partner/Guarantor/Owner)
R/o Mohallah Sutiyaro, Chak No.5,
Taluka Daharki, District Ghotki.

4. Hurgun Ram S/o Jeewan Lal,
(Partner/Guarantor/Owner)
R/o Jail Ke Gali, Taluka Daharki,
District Ghotki.

5. Walab Dass S/o Bhangan Dass
(Partner/Guarantor/Owner)
R/o Mukhi Mohallah, Taluka Daharki,
District Ghotki.

6. Sham Lal S/o Preem Chand,
(Partner/Guarantor/Owner)
R/o Mukhi Mohallah, Taluka Daharki,
District Ghotki.

7. Ahmed Ali S/o Abdul Latif, (Grower)
R/o P.O Reti Taluka Daharki, Near Mokhi Mullah
District Ghotki.

8. Ali Gul S/o Amanullah (Grower)
R/o Village Habib Soomro,
Taluka Daharki, District Ghotki.

9. Akbar S/o Faiz Muhammad (Grower)
R/o Faiz Muhammad Khan Pitafi,
Taluka Daharki, District Ghotki.

10. Sardar Ali S/o Muhammad Sadiq (Grower)
R/o Village Baho Kanjho, Taluka Daharki,
District Ghotki.

11. Imdad Ali S/o Allah Rakhiyo (Grower)
R/o Village Kalal Mohallah,
Taluka Daharki, District Ghotki.

12. Niaz Ali S/o Sultan Ahmed, (grower)
R/o Abdullah Rajari,
R/o Taluka Daharki, District Ghotki.

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13. Abdul Bari S/o Abdul Wahab (grower)
R/o Khuda Bux Colony,
Taluka Daharki, District Ghotki.

14. Aijaz Ahmed S/o Sultan Ahmed (grower)
R/o Village Khuda Bux Laghari,
Taluka Daharki, District Ghotki.

15. Ashok Kumar S/o Pretam Dass (grower)
R/o Menghwar Mohallah, Taluka Daharki,
District Ghotki.

16. Abdul Hafeez S/o Abdul Hameed (grower)
R/o Village Jarwar Mirpur Mathelo,
Taluka Dharki, District Ghotki.

17. Sajjad Ali S/o Mehboob Ali (grower)
R/o Khuda Bux Colony,
Taluka Daharki, District Ghotki.

18. Riaz Ahmed S/o Muhammad Bux @ Anwar (grower),
R/o Siyal Mohallah, Taluka Daharki,
District Ghotki.....***RESPONDENTS***

APPEAL U/S 22-A BANKING ORDINANCE 2001

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1st Civil Appeal No. S-06 of 2023

Present:
Mr. Justice Khadim Hussain Tunio
Mr. Justice Ali Haider 'Ada'

Appellants:	M/s Sehwani Cotton and Others *through* Mr. Ashok Kumar K. Jamba Advocate
Respondents:	M/s National Bank of Pakistan and Others, *Through* Mr. Fareed Ahmed Soomro Advocate
Date of Hearing:	21-05-2025
Date of Decision:	21-05-2025
Date of Reason:	10-06-2025

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JUDGMENT

Ali Haider 'Ada',J:- This appeal is directed against the Judgment dated 30.01.2023 and the Final Decree dated 01.02.2023, passed by the learned Banking Court No. II, Sukkur Division (hereinafter referred to as "the Trial Court") in Suit No.691 of 2021, filed by the Respondent Bank under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("FIO, 2001"), whereby the suit for recovery of Rs.8,,572,122.97/- was decreed in favour of the respondent Bank.

2. The appellants before this Court, the Appellants No.1, 2, and 3, were arrayed as Defendants No.1, 3, and 4 in the said suit and were shown to have executed Guarantee Agreements/Guarantor in favour of the Respondent Bank. Appellants No.4 to 7, who were impleaded in the suit as Defendants No.16, 17, 21, and 22, were the principal borrowers or beneficiaries of the finance facility in question. According to the respondent bank, the suit was filed against twenty-three (23) defendants in total. The aforementioned judgment and decree have been impugned before this Court only by the above-named seven appellants, whereas the remaining co-defendants did not assail the decision of the learned Trial Court and have allowed the same to attain finality against them.

3. Upon service of summons, the appellants entered appearance and contested the proceedings by filing an application under Section 10(2), (3), (4)

and (5) of the FIO, 2001, seeking leave to defend the suit. In response, the respondent Bank submitted its replication, controverting the assertions raised by the appellants. After hearing both sides and examining the material placed on record, the learned Trial Court was not persuaded by the grounds raised in the leave application and proceeded to dismiss the same, vide order dated 30.01.2023, thereby declining leave to defend. Consequent thereto, the learned Trial Court passed the Judgment dated 30.01.2023, followed by a Final Decree dated 01.02.2023, thereby decreeing the suit in favour of the respondent Bank for the claimed amount of Rs.8,572,122.97/-, with costs and such other relief as deemed appropriate under the law.

4. Briefly stated, the appellants, who not only stood as guarantors but also availed agricultural production finance from the Respondent Bank, were granted agricultural finance under a structured facility. As security, immovable property bearing Block Nos. 196-1 (2-25 acres), 196-3 (0-28 acres), and 197-1 (3 acres), collectively measuring 6 acres (equivalent to 261,360 sq. ft.), situated at Reti Road, Town and Taluka Daharki, was mortgaged in favour of the respondent Bank. The primary security also included hypothecation of standing crops to the extent of Rs.500,000/- for each borrower/grower. Upon failure to repay the outstanding liability, which aggregated to a sum of Rs.8,572,122.97/-, inclusive of markup and other charges, the respondent Bank filed the subject suit, asserting that each borrower had individually availed principal finance of Rs.500,000/- and that all were jointly and severally liable for the entire outstanding amount. In support of its claim, the respondent Bank produced the relevant loan documents including loan application forms for agricultural production/development finance, statements of accounts, mortgage deed, sale deeds, entries from the register of rights (Form VII-B), partnership deed, revenue record and forced sale valuation certificates. It was asserted that all the defendants were interrelated as partners, guarantors and owners of the mortgaged property, having constituted a business concern under the name and style of M/s Sehwani Cotton Ginners. Upon examination of these documents, the learned Trial Court found that the claim was duly substantiated and accordingly proceeded to pass the impugned judgment and final decree in favour of the respondent Bank.

5. Learned counsel for the appellants contended that the impugned judgment and decree is not sustainable under the law, as the appellants neither

stood as guarantors nor executed any document in favour of the respondent Bank. It was argued that the appellants were erroneously arrayed as parties to the suit without any legal or contractual obligation. Learned counsel further ubmitted that in the absence of duly executed guarantee agreements or other binding documents, the suit was not maintainable against the appellants and that the documents relied upon by the respondent Bank are hit by the relevant provisions of law. However, the learned Trial Court, without appreciating these fundamental objections, proceeded to pass the judgment and decree against the appellants, which is legally untenable.

6. Conversely, learned counsel for the respondent Bank vehemently opposed the contentions raised by the appellants and submitted that all statutory and procedural requirements for institution of the suit were duly complied with. It was asserted that the record unequivocally establishes the active participation of the present appellants in the loan transactions, both in the capacity of guarantors and beneficiaries of the finance facility. Learned counsel further contended that mere denial of liability by the appellants, in the face of documentary evidence bearing their signatures and endorsements, is devoid of merit. It was maintained that the documents on record, including loan applications, guarantee agreements, hypothecation deeds and revenue records, fully support the respondent Bank's claim and were rightly relied upon by the learned Trial Court.

7. Heard the learned counsel for the parties and perused the material available on the record.

8. It is an admitted position that the appellants, along with others, had availed the loan facility in question from the respondent Bank. The record further reveals that the appellants not only participated in obtaining the said loan but also executed various documents in the capacity of guarantors. The loan was sanctioned under the head of agricultural finance for production and development purposes. The documentary evidence placed on record by the Respondent bank includes, inter alia, the loan application, statement of accounts, mortgage deed, sale deeds, register of rights (R.O.Rs), partnership deed, revenue record and forced sale valuation certificate, all of which bear the signatures of the appellants or are otherwise connected with them. At this stage, the plea taken by the appellants that the said documents are not related to them

is prima facie misconceived and not supported by any cogent or credible material. Mere denial of liability or general averment questioning the transaction, without substantiating the same through any plausible or prima facie evidence, cannot be made a ground to defeat the lawful claim of the financial institution.

9. It is also significant to note that there is no material on record produced by the appellants to demonstrate that the statement of accounts maintained and submitted by the respondent bank has been wrongly prepared or contains any miscalculation. It is a settled proposition of law that the statement of account, if duly certified, constitutes prima facie valid evidence of the outstanding liability. The appellants have not pointed out any specific entry in the account to challenge its accuracy or authenticity.

10. Furthermore, in terms of Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, the liability of a guarantor is co-extensive with that of the principal borrower unless specifically limited by the terms of the guarantee. In the present case, no such limitation or condition has been brought to the Court's attention. Therefore, the guarantors are legally bound to discharge the liability of the principal borrower in case of default.

11. It is also pertinent to mention that the appellants have neither alleged nor pleaded in the application under Section 10 of FIO-2001 that the agreements, mortgage deeds or other documents executed between the parties are forged, fabricated, or otherwise not genuine. The entire application is silent on this crucial aspect. In the absence of any specific denial of the authenticity of such documents and in the absence of any prayer seeking their cancellation on grounds of fraud or misrepresentation under the relevant provisions of the Contract Act, 1872 or Specific Relief Act, 1877, the appellants cannot be permitted at this stage to indirectly cast doubt on the validity of such documents by way of mere verbal assertions. There is no material on record suggesting that these documents were executed under duress, misrepresentation, or fraud. Mere denial, without substantiating the same through cogent and documentary evidence, does not displace the presumption of correctness which attaches to bank documents in recovery matters. In view of the above discussion, this Court is of the considered view that the appellants have not been able to make out a case, wherein the record sufficiently

establishes that the appellants are liable for the repayment of the finance facility availed, both as borrowers and guarantors.

12. This principle is in consonance with Section 128 of the Contract Act, 1872, which recognizes that the surety's liability is equivalent to that of the principal debtor, unless specifically stated otherwise in the terms of the guarantee.

13. In support of the foregoing legal and factual observations, reliance is placed upon the following authoritative pronouncements, which fortify the view taken herein.

(a) Mrs Asma Hassan vs Askari Bank Limited 2019 SCMR 1873

> *2. We have noted that contract on the basis of which financial facility was lastly availed was executed on 3-3-2010under which the amount was repayable by 3-12-2010, hence the learned Judge of Banking Court rightly allowed claim of markup only upto 31-12-2010 and beyond this period only cost of funds was awarded. The decision of the Banking Court was upheld by the High Court vide judgment. Before this Court, learned counsel for the petitioner contended that based on forged documents banking suit has been filed. We pointed out to the counsel for the petitioner that there is an admission with regard to availing the financial facility in question and there is no specific denial as to the quantum of financial facility nor any calculation error in the statement of accounts has been pointed nor any entry in the statement of accounts has been questioned to which he had no answer. Even the markup was allowed upto 31-12-2010 where the amount was utilized well beyond this period and is still outstanding against the petitioner. In these circumstances, we found no reason to upset the findings of both the courts below. This petition is, therefore, dismissed and leave is declined.*

(b) Syed Abbas Ali vs Bank of Punjab 2015 CLD 1409.

> *13. The settled rule appeals to be that if variation or composition of the loan or time etc., as to its repayment was allowed by the creditor to the borrower and consent/assents in advance was given by the guarantor in the letter of guarantee, subsequent to the date of guarantee, such variation, composition, extension, change or indulgence being within the contemplation of the parties at the time of execution of guarantee did not effect discharge of the surety/guarantor from obligation under the guarantee. And as such surety continued to be bound by the terms of the guarantee despite enlargement of time, composition and variations between the creditor and the principal borrower. The rights available to the surety under the Contract Act can be waived by the surety. Although, we have observed that in consideration of the renewal/restructuring the respondent No.2 had executed a new guarantee; however, without prejudice to this effect even if it is assumed that no such guarantee was executed then in view of the law laid down by this Court in Mian Aftab A. Sheikh and 2 others v. Messrs Trust Leasing*

Corporation Limited and another (2003 CLD 702) ([Lahore] and H.B.L. v. Crescent Softwear Products (Pvt.) Ltd., (2009 CLD 412) the surety remains bound for repayment of the finance facility along with the principal debtor.

(c)Muhammad Arshad vs Citi Bank N.A Lahore2006 SCMR 1347.

4. We have carefully examined all the contentions canvassed at bar on behalf of the petitioners, scanned the entire record and perused the judgment and decree, dated 22-10-2001 passed by learned Banking Court as well as the judgment impugned. In our considered view the entire controversy revolves around the question as to whether the agreement, dated 26-6-1999 was executed between the parties or otherwise? A careful scrutiny of the entire record would reveal that agreement, dated 26-6-1999 was executed between the parties. The agreement, dated 26-6-1999 was not only signed but the petitioners also affixed their thumb-impressions on it which were never denied. We are not at all impressed by the contention raised on behalf of the petitioners that the genuineness and authenticity of the agreement, dated 26-6-1999 is not above board as the relevant columns were left blank and filled in subsequently by the Bank. For the sake of argument even if it is admitted A then why the agreement dated 26-6-1999 was acted upon and pursuant whereof ten installments had been paid and the outstanding liability was reduced from Rs.21,05,280 (mark-up price) to Rs.17,95,176. In fact the above installments were made as per repayment schedule which was inseparable part of the agreement dated 26-6-1999. It must not be lost sight of that the main object to get the renewed agreement was restructuring of the finance facility and not liquidation of the liability. We have no hesitation in our mind to hold that agreement dated 26-6-1999 was authentic, genuine and executed between the parties and acted upon. A careful perusal of the agreement dated 26-6-1999 would reveal that mark-up was charged in accordance with the terms and conditions and stipulated therein. It is to be noted that in the agreement dated 26-6-1999 it has been stipulated in a categoric manner that the petitioners had also entered into mark-up agreement which was executed on 21-6-1995 and thus, it stood admitted by the petitioners. It would not be out of place to mention here that an amount of Rs.21,05,280 was mentioned as mark-up in the last agreement. It would be too late in the day to challenge its authenticity on the pretext of certain blank columns. The question which arises here at this juncture would be that as to why certain columns were left blank and if it was so done why the incomplete agreement was signed by the petitioners? No answer could be given by the learned Advocate Supreme Court on behalf of the petitioners. In our considered view the plea of "blank columns" would hardly renders any assistance to the case of petitioners. In view of the provisions as contained in section 20 read with section 118 of the Negotiable Instruments Act, 1881 no benefit could be given to the petitioner on the ground that the agreement was not completely filled in when executed as it would have no substantial bearing on the validity of the agreement. In this regard reference can be made to case Muhammad Sarfraz Khan Rana v. Government of the Punjab PLD 1990 Lah. 88. It is well-settled by now that "Negotiable Instruments Act provides that where one person signs and delivers to another paper stamped in accordance with law, either wholly blank or having written thereon incomplete negotiable instrument, in order that it may be made, or completed into negotiable instrument, he thereby

gives prima facie authority to person who C receives that paper to make or complete it as case may be into negotiable instrument for any amount. Furthermore, section 118 of Negotiable. Instrument Act, provides that presumptions are attached to negotiable instruments, which, inter alia includes that negotiable instrument was made or drawn for consideration and that every instrument bearing date was made or drawn on such date. Held: Documents were given blank as canvassed by appellants even then appellants are stopped to challenge legality, validity and genuineness of said documents. M.P. R.M. Irulandi Mudaliar v. Syed Ibrahim AIR 1962 Mad. 326; National Bank of Pakistan v. Azizullah Hassan 1984 MLD 1035; Messrs Mach Knitters (Pvt.) Ltd. v. A.B.P. 2004 CLD 535; Iftikhar Hussain Khan of Mamdot v. Ghulam Nabi Corporation PLD 1971 SC 550; United Bank v. Business Investment Ltd. 1982 CLC 1101; Karim v. Zikar Abdullah 1973 SCMR 100. The learned Advocate Supreme Court on behalf of petitioners has ignored the fact that "person signing and delivering to another a paper stamped in accordance with law relating to stamp duty chargeable on negotiable instruments either wholly blank or having written thereon and incomplete negotiable instrument so that it may be made or completed into a negotiable instrument, prima facie authorizes recipient of such negotiable instrument to fill in required particulars. Presumption, held, would arise under section 188(b) regarding a negotiable instrument bearing a data as having been made or drawn on such date". National Commercial Bank Ltd. v. Muhammad Younus Butt 1980 CLC 90. We are conscious of the fact that "party to proceedings could discharge burden of proof placed upon him under provisions of section 118 of Negotiable Instruments Act either by producing definite evidence showing that consideration had not been passed or by relying upon facts and circumstances of case and also by referring to flaws in evidence of plaintiff and then contending that presumption had been rebutted". Chandan Lal v. Messrs Amin Chand Mohan Lal AIR 1960 Punjab 500; Sundar Singh v. Khushi Ram AIR 1927 Lah,. 864 which could not be done.

(d) Ghousia Rice Mills vs National Bank of Pakistan 2024 CLD 965

20. Whereas, the objection of the appellant with regard to the suit filed by the respondent (bank) that all the documents related to finance were neither proved, nor substantiated and suit was not required to be decreed in summarily manner, is also not tenable. The documents of finance were secured under the provisions of the Financial Institutions (Recovery of Finances) Ordinance 2001, and in this respect learned counsel for the appellant has failed to point out any inadmissible document considered by the trial Court, while passing the impugned judgment and decree. The suit filed by the respondent (bank) was verified on oath and supported by all necessary documents including statements of account, loan application, agreement of loan, undertaking by the appellant, power of attorney, mutation for mortgage property and other relevant documents, which were duly signed / attested as required under the law and suit was covered within the definition of Section 9(1) of the Financial Institutions (Recovery of Finances) Ordinance 2001, which further indicates that requirements of subsection (2)(3) of Section 9 were complied with. The appellant in the application for leave to defend 6. We asked learned counsel for the appellants to show any substantial question of law raised through the petition for leave to appear and

defend, which requires trial through recording of evidence. Learned counsel was unsuccessful. Factum of renewal / extension of finance facility, upon request of the deceased was established. No document is indicated to show adjustment of finance facility of 2003-04 - conversely respondent Bank established withdrawal of funds for adjusting overdue liabilities with funds extended through finance facility in question.
Funds were made available and withdrawn through cheque No.72861026 for Rs.599,589/- - details were mentioned in paragraph 9 of the plaint but same were not explicitly rebutted in the leave application. It is established that amounts overdue were adjusted and working capital was made available for one year, at the request of predecessor of the appellants. Finance and security documents were executed and acted upon. Respondent Bank had provided statement of account for the finance facility 2003-04 and 2005-06, wherein no objection was raised with respect to any entry(ies) therein. Respondent Bank disclosed factum of suit instituted by the Customer against the Financial Institution - in paragraph 11 of the plaint - which fact was neither denied nor any document / order referred to dispute factum of institution of suit and effect of its dismissal. Dismissal of suit otherwise manifest acquiescence on the part of deceased qua legitimacy of the claim. Predecessor of the appellants was an obvious beneficiary of the finance facility, extended and availed. Suit has been instituted by the authorized officers, one of the signatory was identified as Branch Manager. Statement of accounts met the requirements of law. Plea that opportunity be granted to the legal heirs of the deceased to contest is misconceived, especially in the context of absence of any substantial question of law and fact raised in the application for leave to defend the suit -- ambiguous objection raised otherwise call for no serious attention. Requirements in terms of section 10(5)(6) of Financial Institutions (Recovery of Finance) Ordinance, 2011 were not met. Judgment referred extend no benefit, and ratio therein is distinguishable.
had merely raised objection, which was reiteration of his stance with regard to his suit filed against respondent (bank) arising out of High Court Appeal No(s).01 of 2011, but pursuant to said objections, no documents were annexed to show sufficient cause, enabling the appellant to seek leave to defend. In absence of any document in support of his plea or contention, there was no occasion to permit the appellant to defend the suit. The findings rendered by the Court below arising out of the judgments and decrees of High Court Appeal No(s).01 of 2011 and High Court Appeal No(s).02 of 2013 neither reflect any misreading or non-reading of evidence, nor there is any glaring illegalities or irregularity, to warrant interference in the impugned judgments and decrees.

(e) Muhammad Akram vs Allied Bank Limited 2024 CLD 1444

(f) Safdar Ali Jalbani vs ZTBL 2024 CLD 845

7. We have examined the Plaint and the supporting documents filed by ZTBL, including, inter alia, the Statement of Account duly verified under the Bankers Books Evidence Act, 1891. According to the Statement of Account, the finance was disbursed to SAJ's bank account on 15.03.2017 in the sum of Rs.500,000. This opening entry is reflected in the Statement as the first credit entry. There is no carry forward entry in the account, negating Counsel for SAJ's submission that ZTBL

was claiming finance advanced in prior years. Therefore, SAJ's plea that the banking suit pertained to the finance of previous years carries no weight.

M/s Haji Mehdi Hassan and Sons vs Allied Bank Limited 2024 CLD 137

7. Record shows that the claim of the respondent-bank was supported by the following documents annexed with the plaint:-

a) Registered Mortgage Deed No.3219/1 dated 21.04.2000

b) Agreement for finance on markup basis IB-6 dated 06.05.2010

c) D.P Note dated 06.05.2010 IB-12

d) Letter of Hypothecation IB-25 dated 06.05.2010

e) Personal Guarantees of partners / mortgagors / guarantors IB-29

f) Memorandum confirming third party deposit of titled deeds IB-24

The statement of account annexed with the plaint is certified within the meaning of section 4 of the Bankers' Books Evidence Act, 1891, therefore, there is no doubt about its authenticity and validity. The appellants disputed the veracity of the documents brought on record by the respondent-bank through leave application without any documentary proof, thus, it did not constitute a plausible defence. Appellants failed to present some substantial question of fact or law, which needed to be tried or investigated into. Appellants did not append any proof regarding alleged repayments, which were allegedly suppressed by the bank. Needless to say that in banking suits, the parties have no option to make general allegations/assertions, especially in respect of amounts but must be absolute and specific in this regard. In these circumstances, they were rightly held disentitled for grant of leave. Reference can be made to Messrs New Bhatti Oil Mills through Proprietor and another v. National Bank of Pakistan through Principal Officer and Attorney Holder (2016 CLD 1805), PAK OMAN Investment Company Limited v. CRESOX (Pvt.) Limited (2017 CLD 1659) and National Bank of Pakistan v. Messrs Kohinoor Spinning Mills and others (2021 CLD 1112).

(g)Muhammad Saleem Khan vs MCB Bank limited 2020 CLD 737

6. The note practically incorporates the language of section 2(8) of the Act, 1891 and therefore meets the requirement of the law. We have confronted the learned counsel for the petitioner with the language of the note and asked him to explain how it does not meet the requirements of the Act, 1891 and hence section 9(2) of the F.I.O. He has not been able to come up with any plausible or legally sustainable arguments to defend the judgment of the Banking Court. The learned ASC half-heartedly attempted to argue that every page of the account statement is required to contain the said certification. We are afraid the argument is misconceived and is not supported by a plain reading of the language of section 2(8) of the Act, 1891. We have also noticed that each page of the Account Statement is duly stamped and initiated by the concerned official of the bank which in our opinion amply and adequately meets

the requirements of the law. The Account Statement is one comprehensive document containing the entire history of the Account containing credit and debit entries in a chronological order and is only required to contain verification at the end of such document.

(h) Trust Investment Bank Limited vs The Bank of Punjab 2021 CLD 1430

10. Through the instant appeal, the Appellant has also challenged the veracity of the documents produced by the Respondent Bank before the learned Banking Court but it is just a bald allegation without any substance or proof. The Appellant could not produce anything in support of its stance taken in the PLA. Regarding the entries of statement of accounts, there is nothing untoward seen as some of the alleged disputed entries are pertaining to disbursement of finance facility to the Appellant. Adjustment of markup has also been made in accordance with law and no markup over markup has been charged by the Respondent Bank. Admittedly, the Appellant has not denied the execution of documents in favour of the Respondent Bank, however, has challenged their authenticity verbally and without any documentary proof.

(i) Baba Fareed Ghee Industries (Pvt) Limited vs National Bank of Pakistan 2002 CLD 669

2. The objections of the learned counsel in respect of the statement of account are not well-founded and are not supported by the record. We note that only vague assertions have been made before us by learned counsel for the appellants. He was asked to be more specific as to the objections on the statement of account. He was also asked to show if any specific objections had been taken in respect of statement of account in the petition filed by the appellants/defendants seeking leave to appear and defend. He was unable to refer to any specific objections. He was then asked to show us if the appellant No.1 which is a limited company, had filed its own statement of account to controvert the statement of account filed by the Bank. This question was put to learned counsel because a limited company is by law required to maintain accounts. Learned counsel conceded that no such statement of accounts had been filed in Court on behalf of the appellants/defendants to substantiate the allegations made in their application seeking leave to appear and defend. In this view of the matter the bald assertions made by learned counsel for the appellants without backing by any documentary proof, cannot be given any credence.

(j) M/s Mach Knitters (Pvt) Limited vs Allied Bank of Pakistan 2004 CLC 535

10. We have also examined the statement of accounts pertaining to these accounts, maintained by the respondent-Bank in ordinary course of business, which is prima facie proof of the fact that the amounts, mentioned therein, are "due" against the appellants. The said appellants have not raised any objection to the statement of accounts or any of the entries contained therein. Even if there are any minor discrepancies in the

statements of account, those cannot, in any way, disentitle the respondent-Bank from claiming the colossal suit amount. There is no denial of the fact by the appellants that the financial facilities were availed and certain amount is outstanding, however, no counter-statement of accounts has been filed by -the appellants to demonstrate that actually the said sum is outstanding against them. The statements of account, produced by the Bank, are certified in accordance with the provisions of Bankers Book Evidence Act, 1894 and the presumption of correctness is attached to such entries maintained by the Bank in the normal course of business, moreso, when there is no rebuttal to these statements of account. In the absence of any rebuttal on record, we are not inclined to disbelieve the statements of account, submitted by the respondent-Bank, which were not challenged by the appellants.

14. In view of the above discussion and being fortified by the legal principles enunciated in the cited judgments, we are of the considered view that the judgment and decree passed by the learned trial Court do not suffer from any legal infirmity, material irregularity, or jurisdictional error warranting interference by this Court in appellate jurisdiction. Accordingly, the instant appeal stood dismissed and the judgment and final decree passed by the learned trial Court were upheld by our short order dated 21.5.2025 and these are the reasons for our short order of even date.

JUDGE

JUDGE