IN THE HIGH COURT OF SINDH, KARACHI

High Court Appeal No.205 of 2001
[National Investment Trust Limited versus Textile Management (Pvt.) Limited]

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

Date of hearing	:	11.02.2026
Appellant	:	National Investment Trust Limited, through Mr. Muhammad Masood Khan, Advocate along with M/s. Muneer Ahmed and Muhammad Suffiyan Khan, Advocates.
Respondent	:	Textile Management (Pvt.) Limited: **Nemo**

JUDGMENT

Muhammad Faisal Kamal Alam, J: This Appeal is preferred by National Investment Trust Limited (NIT, Appellant) against the Judgment and Decree dated 12.05.2001 handed down in Suit No.1659 of 1999 instituted by Respondent-Textile Management Private Limited (Plaintiff).

2. Succinctly and undisputedly, the facts are that the Respondent was a Customer of the Appellant, which extended a Finance Facility of Rupees 8**.**207 Million in terms of Murabaha (Purchase and Sale Agreement) dated 23.05.1996-**the Subject Agreement;** (Annexure "A/3", page-91 of the Court File) against the pledge of 104,400 shares of Muhammad Farooq Textiles Mills Limited. The above amount was payable in three installments and the final installment was due on 20.01.1997 and the

payable figure was Rs.7,402,500/- *(Rupees seven million four hundred two thousand five hundred only)*-**the liability**. The first two installments were timely paid on 20.07.1996 and 20.10.1996, so also acknowledged in one of the Correspondences dated 25.11.1999 of the Appellant (at page-207 of the Court File).

The present controversy arises out of the Respondent's failure to pay the said liability within the stipulated period and its subsequent requests, through various correspondences exchanged between the parties, seeking extension of time for settlement of the outstanding liability.

3. The Respondent instituted the Suit on the assertion that under the Subject Agreement dated 23.05.1996, it was liable to pay only the agreed sale price of Rs.8,207,500/- *(Rupees eight million two hundred seven thousand five hundred only)* and that after payment of the said amount, no further liability survived against it.

4. According to the Appellant’s main stance, the extension of time in settling the liability is a novation of original terms of the Subject Agreement and the Respondent was / is liable to pay variable rate of markup on the outstanding liability. Argued that the Respondent requested reduction of markup from 23% to 15%, which was refused; once the Respondent agreed and availed the benefit of the extension of time to pay off the liability, the latter is estopped from claiming that the liability is payable under the terms of the Subject Agreement.

5. No one appeared from the Respondent’s side.

6. Arguments heard and record perused.

7. The following points arise for determination in this Appeal:

(i) Whether the undisputed Correspondences relied upon by the Appellant, created a novation of Contract?

(ii) Whether the impugned Judgment considered the record and applied the law correctly?

(iii) What should the Decision be?

8. It would be relevant to reproduce the definition of 'Morabaha Sale Price' as mentioned in the Subject Agreement [*ibid*]:

> *"2.1.3* ***"Morabaha Sale Price" means the price payable by the Company to NIT with respect to the Goods calculated to include the actual price paid by NIT in respect of the goods plus actual expenses, such as communication, administrative expenses, taxes and customs duties, demurrages, surcharges, octroi, etc., borne by NIT in respect of the Goods and in addition a return (profit) or NIT all as specified in the Goods List set forth in Annexure-B."***

9. For deciding the present controversy, it is necessary to peruse the Correspondences exchanged between the Appellant and the Respondent available on record, spanning a period of almost four years. The first Letter is of 13.04.1996, addressed by the Respondent to the Appellant, in which it is stated, *inter alia*, that an amount of Rupees One Million would be paid and Rupees Seven Million would be rolled over for a period of nine months from the date of expiry of the finance facility. This was responded to by the Missive dated 06.05.1996 by the Appellant, agreeing to the extension of Murabaha facility of Rupees Seven Million for further nine months period against the same pledged shares, but at a markup of 23%.

Various Letters / Annexures from the Appellant's side, relied upon by its Legal Team, have called upon the Respondent to make payment of

Rs.740,2500/- *(Rupees seven million four hundred two thousand five hundred only)* along with the markup at the rate of 23% from 21.01.1997 till settlement of the entire liability. Vide a covering Letter of 24.10.1997, duly received by the Appellant, the Respondent paid an amount of Rs.765,000/- *(Rupees seven hundred sixty five thousand only)* through Cheque No.863756 dated 23.10.1997 and it was followed by other payments as well, as envisaged in Correspondences available on record, *inter alia,* of 27.11.1998 (*Annexure "A/21" of the Appeal*).

10. In their Leave to Defend Application, the Appellant has highlighted the repayments done by the Respondent, particularly in Paragraphs 7.4 to 7.9. It is admitted in Paragraph 7.9 that on 14.06.1999, the Respondent made a further payment through Cheque of Rs.1,695,893/- *(Rupees one million six hundred ninety-five thousand eight hundred ninety-three only)* wherein along with principal, 18% markup was also added, covering the period of 01.02.1999 to 31.05.1999. The stance of the Appellant is that, unilaterally and illegally, the Respondent calculated the markup at 18% instead of 23% as earlier agreed.

11. In the impugned Judgment it is mentioned after considering the record, that undisputedly the Respondent paid the entire sale price as agreed in the Subject Agreement, but, beyond the stipulated period.

BCD [Banking Control Department] Circular No.13 dated 20th June, 1984 [as amended from time to time] is relevant, which was promulgated with the object to eliminate 'Riba' from the Banking System, inter alia, introducing different modes of finance, within the permissible parameters of Islamic Law, which does not recognize mere passage of time as a lawful basis for increasing an existing debt. The above Subject Agreement, that is why included the term "profit" while mentioning the

definition of Murabaha Sale Price [*ibid*], which means that besides payment of actual amount given to the Respondent by the Appellant, the repayment of Murabaha facility / finance facility would include profit and other prescribed charges, which cannot be replaced by introducing another mark-up component beyond the tenure of the Subject Agreement. Once the sale price under the Murabaha transaction stood determined and the goods were delivered, the liability of the customer became fixed and ascertainable. Upon default, the unpaid portion of the agreed sale price merely remained recoverable as debt. The mere extension of time for repayment could not convert the existing debt into a new profit-generating transaction.

12. Before examining the effect of the aforesaid Letters/ Correspondence(s), it would be advantageous to advert to the concept of novation embodied in Section 62 of the Contract Act, 1872. Under the said provision, if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. However, for a valid novation, there must be a clear intention on the part of the contracting parties to extinguish the original contract and substitute it with a new and independent agreement. Mere indulgence, extension of time for performance, rescheduling of payment, or acceptance of delayed performance does not, by itself, amount to novation unless the original rights and obligations stand replaced by fresh contractual obligations; specially, in a non-interest based finance, as is the present case.

13. Applying the above principles to the facts of the present case, it becomes evident that the Correspondence exchanged between the Parties did not bring into existence any fresh Murabaha transaction or

independent finance facility, as argued. The record does not disclose execution of a fresh Purchase and Sale Agreement, fixation of a fresh sale price, creation of fresh securities, or any other arrangement suggesting substitution of the original contract. Rather, the Correspondence(s) merely reflects requests made by the Respondent for additional time to discharge the outstanding liability and the willingness of the Appellant to accommodate such requests. The Letters / Correspondences in the form of Annexures available on record and discussion in the foregoing paragraphs, show that even the Appellant with a conscious mind, had extended the time for payment of outstanding liability as a continuation of the terms of the Subject Agreement and no new Finance Facility Agreement was executed. It is also significant that the Appellant has not been able to demonstrate that any fresh Murabaha transaction was undertaken between the parties after expiry of the original facility. A Murabaha arrangement necessarily contemplates purchase of an asset and its subsequent sale at an agreed profit. The record is devoid of any material showing acquisition of any fresh asset, execution of a fresh purchase and sale agreement, fixation of a new sale price, or commencement of a fresh financing cycle. The so-called rollover merely represented deferment of payment of an already crystallized liability and cannot, by any recognized principle of Islamic finance, be equated with a fresh Murabaha transaction. This undisputed legal and factual aspect is clarified by the Letters / Request of 13.04.1996 by the Respondent and its acceptance vide a Response of 06.05.1996 (as stated in the foregoing Paragraphs). Learned Counsel for the Appellant has heavily relied upon the conduct of the Respondent in seeking reduction of markup from 23% to 18% in making payments toward discharge of the said liability. Such conduct, according to the Appellant, constitutes an acknowledgment of liability and attracts the principle of

estoppel. The argument, though attractive at first glance, cannot be accepted. It is a settled principle that estoppel cannot operate against law nor can acquiescence validate a demand which is otherwise impermissible under the governing legal framework. Therefore, even if the Respondent had, for the purpose of settlement or adjustment of accounts, expressed willingness to pay markup at a reduced rate, such conduct would not confer legality upon a claim which is not otherwise recoverable under the governing principles of Murabaha financing and the relevant regulatory framework. This contention cannot be accepted and is untenable, as it is a settled rule, in such type of financial transactions that a Financial Institution is **not allowed to charge markup upon markup.** The afore-referred sale price in the Subject Agreement has / had structured the markup component as profit; thus, charging / demanding markup either at the rate of 23% or even at a lesser rate means that an additional markup is being charged and demanded from the Respondent. This act defeats the very purpose of the afore-referred statutory Circular. In this regard, the Judgment of this Court handed down in the case of *Habib Bank v. Messrs Qayyum Spinning Ltd. [2001 MLD 1351]* is relevant, in which an exhaustive discussion is done in respect of Islamic mode of finance. It is by now a settled proposition that an appellate Court would not ordinarily interfere with a judgment and decree merely because another view of the matter may also be possible. Interference is warranted only where the findings recorded by the Court below are shown to be contrary to the evidence on record, based upon misreading or non-reading of material evidence, or suffering from a manifest error of law. Having independently examined the record, this Court finds that the learned Single Judge correctly arrived at conclusions fully supported by the material available on record.

14. Points for determination are answered as under_

(i) The undisputed Correspondences relied upon by the Appellant did not create any novation of the Contract. They merely reflected an extension of time for payment under the existing Murabaha transaction and did not constitute a fresh Finance Facility Agreement authorizing the charging of further markup beyond the agreed sale price.

(ii) The impugned Judgment has correctly considered the record and properly applied the relevant law and principles governing Murabaha financing and does not suffer from any legal or factual infirmity warranting interference by this Court.

(iii) Consequently, this Appeal is ***dismissed***, with no order as to costs.

JUDGE

JUDGE

Karachi.
Dated: 15.06.2026.
M.Javiad PA