

ORDER SHEET

IN THE HIGH COURT OF SINDH, AT KARACHI

First Appeal No.83 of 2025

(*Abdul Rehman Khanzada v. Bank Islami Pakistan Limited*)

Date

Order with Signature(s) of Judge(s)

1. For Order on Office Objection / Reply 'A'
2. For hearing of main case
3. For hearing of CMA No.993/2025

17.02.2026

M/s. Saiff Ali Akbar and Farah Khan, Advocates for Appellant
Mr. Umair Nabi, Advocate for Respondent

Has challenged the Order dated 22.05.2025, dismissing the Application of Appellant (Judgment Debtor/Defendant) in Banking Suit No.36 of 2024 (Re: Bank Islami Pakistan v. Abdul Rehman Khanzada).

Learned Counsel for Appellant states that Leave to Defend Application was not filed, because the Appellant was not properly served at the given addresses and hence, was not given a fair opportunity to defend the Suit. Has referred to Plaint (Page-169, Annexure-B of the Appeal), that his addresses mentioned as (i) House No.4, 26th Street, Sector E, Manzoor Colony, Karachi and (ii) Muhallah Khanzada, Ward No.5, Sakrand, District Shaheed Benazirabad; whereas, the correct address of Appellant is House No.2, 26th Street, Sector E, Manzoor Colony, Karachi, as mentioned in the Tenancy Agreement (Page-71); referred to the Publication and Court Notice in which the same mistake has been repeated. Contends that in the Finance Facility Agreement itself the address is incorrect, as the house of Appellant is not situated in 6th Street, but in 26th Street (Page-217 of First Part). The other set of facts as per pleadings are that the Appellant fell ill and was suffering from multiple diseases relating to Kidney failure and hence, was not either attending his business or other routine task (Ground D of the Appeal). Cited Decisions in support of his contention and in particular, **2011 SCMR 1496 (Mubarak Ali v. First Prudential Modaraba)**, in which the Appeal of the Customer was allowed, on the ground that the address was wrongly mentioned by the Bank in proceeding.

The above line of arguments is rebutted by Mr. Umair Nabi Advocate representing Bank (Decree Holder). He has referred to the initial documents preceding Finance Facility in which Appellant himself written his address as

House No.4, 26th Street, Sector E, Manzoor Colony, Karachi, (Page-99 of Second Part), however, acknowledges that address on Finance Facility is a typographical error, which is curable, because in all other documents, same address is mentioned viz. House No.4, 26th Street, Sector E, Manzoor Colony, Karachi. Has referred to Offer Letter (Page-109 of Second Part with the Comments of Respondent Bank), to support his arguments. Contends that the Tenancy Agreement relied upon by the Appellant (*Supra*) is of 01.04.2024, that is, after Appellant's defaulted on 05.10.2022, followed by the Legal Notice of 18.11.2022 (Page-195), eventually by the above Banking Suit proceeding. Has stated by referring to the supporting Affidavit of Application under Section 12(2) of the Code of Civil Procedure, 1908 ("**CPC**"), filed by the Appellant, that the latter (Appellant) himself has admitted that he acquired knowledge when the Notice of the Execution Application was served upon him; has referred to the said Execution Application (Page-249 of Second Part), in which the same address is mentioned as House No.4, 26th Street, Sector E, Manzoor Colony, Karachi.

Arguments heard and record perused.

After filing of Banking Suit No.36 of 2024, Notices whereof were issued by all four modes, including Publication. The Plaint (Page-169) mentions two residential addresses; one of Karachi—House No.4, 26th Street, Sector E, Manzoor Colony, Karachi, and second one is of Muhallah Khanzada, Ward No.5, Sakrand, District Shaheed Benazirabad, as stated above. The Plaint contained Breakup in compliance of Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 and while handing down the Judgment these aspects were considered that after making part-payment of principal amount so also monthly rental/profit, the Appellant defaulted.

The crucial factual aspect **is about the address**. It is clear from afore-referred facts that at present, we are dealing with three addresses. House No.4, 26th Street, Sector E, Manzoor Colony, Karachi, is mentioned in the official documents, except the Finance Facility Agreement in which the correct House number is mentioned, but Street number is incorrectly mentioned as 6th instead of 26th, but Sector and area is correct, whereas, the address relied upon by the Appellant as mentioned in the Tenancy Agreement (*Supra*), mentions residential address as House No.2, Street No.26, Sector-E, Manzoor Colony, Karachi. The submission regarding Paragraph No.8 of supporting Affidavit of Section 12(2) of CPC Application (filed by the Appellant) as pointed out by the Respondent Counsel, has force, because the Execution Application has been served upon the Appellant at the

same address which as mentioned in the Execution Application is House No.4, 26th Street, Sector E, Manzoor Colony, Karachi. *Secondly*, the Legal Notice is of 18.11.2022, Suit was filed on 03.06.2024, whereas, the Tenancy Agreement is of 01.04.2024, that is roundabout same time. *Thirdly*, in terms of clause 12 of the Finance Facility Agreement, if there is a change in address, it was the duty of the Appellant to inform the Respondent Bank which the Appellant never did. All the official documents of the Bank show the above address, so also, the judicial record, in particular, the above acknowledgment of the Appellant in his supporting Affidavit (*ibid*).

From the above, it is not difficult to conclude that the address mentioned in the Finance Facility is a bonafide error and it cannot give any benefit to the Appellant, because he is relying mainly on the Tenancy Agreement in which the house number is differently mentioned from the official record of Bank; *secondly*, in the Finance Facility's Offer Letter (*ibid*) disbursement was made as it was utilized by the Appellant; at that stage, he could have called upon the Bank for change or correction of the address, but it was not done, which means that the correct address is House No.4 in 26th Street. Admittedly, after availing the Car Finance Loan, the Appellant defaulted and to avoid payment, he has setup the afore-referred defence, which is groundless in the circumstances. The above cited Judgment is distinguishable from the facts of the present case, because in the reported Decision, Bailiff had stated on Oath about non-service of the Summons upon the petitioner, whereas, there was no conclusive evidence that Newspapers in which Court Notice was published, were delivered at the village of the petitioner, which factors were considered by the Hon'ble Supreme Court in favour of the petitioner/customer, but such factors are lacking in the present Appeal, in view of the above discussion.

Therefore, we do not find any illegality or material irregularity in the impugned Order, dismissing Application under Section 12(2) of CPC, of the Appellant. Consequently, this Appeal is dismissed along with pending application(s).

JUDGE

JUDGE