

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan

Mr. Justice Amjad Ali Sahito

First Appeal No.38 of 2024

Appellants : Internet Marketing (Pvt.) Limited & others
through Mr. Aamir Raza, Advocate

Respondent : Saudi Pak Leasing Company Limited
through Syed Aijaz Hussain Shirazi,
Advocate

Date of Hearing : 11.08.2026

Date of Order : ____ .08.2026

J U D G M E N T

Amjad Ali Sahito, J.- The appellants, by way of the instant First Appeal preferred under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (**“the Ordinance”**), have called into question the judgment and decree dated 25.01.2024, passed by the learned Judge, Banking Court-V, Karachi, in Suit No.43 of 2018, whereby the suit instituted by the plaintiff/present respondent was decreed against the defendants/present appellants, jointly and severally, to the extent of the principal amount of Rs.8,435,781/-, along with costs of the suit and cost of funds from the date of default until realization, at the rate of cost of funds of the financial institution as certified by the State Bank of Pakistan from time to time. The decree further stipulated that the appellants shall remain liable for such other civil and criminal consequences as may arise under the contractual terms, applicable rules, or any other law for the time being in force. The prayer clauses ‘b’ and ‘c’ of the plaint were also allowed in favour of the plaintiff/present respondent.

2. Briefly stated, the respondent instituted the aforesaid suit seeking recovery of a sum of Rs.22,642,265/- from the

appellants, on the assertion that various lease finance facilities had been sanctioned and extended to them pursuant to six separate lease agreements, which facilities were duly availed by the appellants. Upon being duly served, the appellants entered appearance and submitted an application seeking leave to defend the suit. The learned Banking Court, vide order dated 25.01.2024, declined the application for leave to defend, inter alia, on the ground that the appellants had admitted availing the lease finance facilities, the repayments made thereagainst, as well as their eventual default in meeting the contractual obligations. The learned Banking Court further observed that the appellants had neither specifically controverted the documents relied upon by the respondent in support of its claim nor identified any particular erroneous or incorrect entry in the statement of account or the break-up of the outstanding liability furnished by the respondent. It was, accordingly, held that the appellants had failed to satisfy the mandatory requirements prescribed under Section 10 of the Ordinance. Thereafter, upon examination of the material available on record, the learned Banking Court determined the outstanding principal/installments payable by the appellants at Rs.8,435,781/- and decreed the suit to the said extent.

3. Learned counsel for the appellants contended that the learned Banking Court had erred in law and on facts in dismissing the application for leave to defend and, consequently, in decreeing the suit, notwithstanding that the appellants had raised substantial questions of law and fact which, according to learned counsel, warranted determination through a regular trial. It was argued that the amount claimed by the respondent was neither admitted nor conclusively established and required proper examination, verification and reconciliation of the relevant accounts and supporting record. Learned counsel submitted that the appellants ought to have been afforded a reasonable opportunity to substantiate their defence by producing evidence and confronting the respondent's claim on merits.

4. It was further contended that the application for leave to defend could not lawfully have been declined merely on the basis of alleged admissions, particularly when the appellants had disputed the quantum of the respondent's claim and had raised objections concerning the outstanding liability. Learned counsel maintained that the learned Banking Court had failed to properly appreciate the nature and substance of the defence taken by the appellants and had proceeded to pass the impugned judgment and decree without affording them an effective opportunity to contest the claim on its merits. According to learned counsel, the questions pertaining to the actual outstanding liability, the correctness of the accounts, and the precise amount, if any, payable by the appellants could not have been conclusively determined without examination of the underlying record, accounts and other relevant material. He, therefore, prayed that the impugned judgment and decree be set aside, the application for leave to defend be allowed, and the appellants be permitted to contest the suit on merits. In support of his contentions, he has relied upon the cases reported as (1) Bank Alfalah Limited Lahore through Muhammad Rafiq and Syed Aqeel Abbas vs. Punjab Small Industries Corporation through Managing Director (2023 CLD 14), (2) First Pakistan Security Limited and others vs. Bank Alfalah Limited (2020 CLD 269), (3) Allied Bank Limited through Authorized Attorneys vs. Messers Shah Nawaz Traders through Proprietor and 5 others (2020 CLD 1037) and (4) National Bank of Pakistan through EVP vs. Zia ul Haq Noon and others (2019 CLD 775).

5. Conversely, learned counsel appearing on behalf of the respondent supported the impugned judgment and decree and contended that the appellants had made clear, specific and unequivocal admissions in their application for leave to defend with regard to availing the lease finance facilities, the repayments made thereagainst, and the subsequent default in fulfilment of their contractual obligations. He further submitted that the appellants had neither disputed the documents relied upon and referred to in the plaint nor identified any particular entry in the statement of account or the break-up of the outstanding amount

which, according to them, was erroneous or incorrect. It was, therefore, argued that the appellants had failed to disclose any substantial question of law or fact within the contemplation of Section 10 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 and that the learned Banking Court had rightly declined leave to defend. Learned counsel further submitted that, upon due consideration of the material available on record, the learned Banking Court had not mechanically decreed the entire amount claimed in the plaint, but had independently determined the amount actually outstanding towards principal/installments at Rs.8,435,781/- and had confined the decree to the said amount. He, therefore, maintained that the impugned judgment and decree suffer from no illegality or infirmity warranting interference in appellate jurisdiction.

6. We have heard learned counsel for the parties and, with their able assistance, have examined the record and the material available before us.

7. A careful perusal of the record reveals that the respondent is engaged in the business of leasing movable assets. Appellant No.1 is a public limited company, whereas Appellant Nos.2 and 3 stood as guarantors thereof. Pursuant to various agreements executed between the parties from time to time, the respondent provided/supplied different movable assets and equipment to the appellants, including televisions, home theatres, audio systems, executive tables, directors' tables, conference-room furniture and other allied items. Under the terms of the respective lease agreements, the appellants were contractually bound to make timely payment of the agreed installments and to otherwise comply with the terms and conditions governing the facilities availed by them. However, despite having received and utilized the leased assets and facilities, the appellants failed to discharge their contractual obligations in their entirety and defaulted in making the payments due and payable to the respondent, consequently leaving an outstanding liability against them. Significantly, the appellants have not disputed the execution of

the relevant lease agreements or the availing of the facilities thereunder. Their failure to specifically controvert the underlying documents or identify any particular entry forming the basis of the respondent's claim assumes considerable significance while examining whether the application for leave to defend disclosed any substantial question of law or fact warranting grant of leave.

8. The principal question that, therefore, falls for determination is whether the appellants disclosed any substantial question of law or fact so as to entitle them to leave to defend the suit. A perusal of the application for leave to defend, as also noticed by the learned Banking Court, demonstrates that the appellants themselves, in paragraphs 2, 3 and 4 thereof, admitted having availed the lease finance facilities, having made repayments thereagainst, and having thereafter committed default in respect of their contractual obligations. They neither specifically disputed the documents referred to in paragraphs 3 and 4 of the plaint nor identified any particular entry in the statement of account or break-up of the outstanding amount which, according to them, was incorrect, erroneous or otherwise liable to objection. Such admissions pertain to the very foundation of the financial transactions between the parties and materially corroborate the respondent's claim. A mere omnibus assertion that questions of law and fact are involved, without identifying the precise nature of such questions or demonstrating the necessity of their determination through evidence, cannot, by itself, satisfy the statutory requirements of Section 10 of the Ordinance.

9. It is equally significant that the appellants neither identified before the learned Banking Court, nor have they been able to point out before us, any specific discrepancy, error or infirmity in the documents constituting the basis of the respondent's claim or in the statement of account maintained in respect of the facilities availed by them. It is further noteworthy that the learned Banking Court did not simply accept the entire amount of Rs.22,642,265/- claimed in the plaint. Rather, after examining

the record and the material produced before it, the learned Banking Court determined the amount actually outstanding towards principal/installments at Rs.8,435,781/- and confined the decree to the said amount. Even before us, no material has been brought on record to demonstrate that such determination is contrary to the evidence or record, or that the learned Banking Court committed any illegality, material irregularity, misreading or non-reading of the evidence in arriving at the said conclusion. In these circumstances, the appellants cannot claim a right to trial merely for the purpose of securing an opportunity to generally contest a liability which, in material particulars, stands admitted by them.

10. We are, therefore, of the considered view that the learned Banking Court rightly exercised its jurisdiction in declining the application for leave to defend, as the appellants failed to satisfy the mandatory requirements of Section 10 of the Ordinance and did not disclose any substantial question of law or fact necessitating the recording of evidence or a regular trial. The judgment and decree subsequently passed by the learned Banking Court are founded upon the material available on record, coupled with the admissions made by the appellants themselves. We find no illegality, irregularity, misreading or non-reading of any material evidence in the impugned judgment and decree so as to warrant interference by this Court in its appellate jurisdiction.

11. We may also observe that the appellants' contention that the amount claimed by the respondent required reconciliation or detailed examination through evidence, without more, does not constitute sufficient ground for grant of leave to defend. The appellants were required to identify with reasonable specificity the particular entries, transactions, documents or calculations which, according to them, were erroneous, disputed or otherwise liable to adjustment, and to disclose the factual and legal basis of such objection. Having failed to do so, and having expressly admitted the availing of the lease finance facilities, the repayments made thereagainst and the subsequent default, the

appellants cannot seek leave to defend merely on the basis of a general denial or an unsubstantiated assertion that the accounts require reconciliation. The record, moreover, demonstrates that the learned Banking Court did not mechanically decree the entire amount claimed in the plaint; rather, upon scrutiny of the record, it restricted the decree to the principal amount of Rs.8,435,781/-. Thus, no prejudice has been demonstrated to have been caused to the appellants, nor have they been able to identify any substantial question of law or fact which could justify remand of the matter for trial.

12. The authorities relied upon by learned counsel for the appellants are distinguishable on facts and in the legal context in which they were rendered. The factual and evidentiary circumstances obtaining in those cases are materially different from those prevailing in the present matter. Consequently, the principles enunciated therein are of no assistance to the appellants and do not advance their case.

13. For the foregoing reasons and in view of the discussion hereinabove, we find the instant First Appeal to be devoid of merit. Accordingly, the same is **dismissed**. Consequently, the impugned judgment and decree dated 25.01.2024, passed by the learned Judge, Banking Court-V, Karachi, in Suit No.43 of 2018, are **maintained**.

JUDGE

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