

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

First Appeal No.42 of 2005

Appellant : ORIX Leasing Pakistan Limited
through Mr. Zeeshan Bashir Khan,
Advocate

Respondents : M/s. Euro Tanneries (Pvt.) Ltd. & others
Nemo.

Date of Hearing : 14.09.2026

Date of Order : 14.09.2026

J U D G M E N T

Amjad Ali Sahito, J.- Through the instant First Appeal, the appellant, ORIX Leasing Pakistan Limited, has called into question the judgment and decree dated 25.04.2005, passed by the learned Judge, Banking Court No.II, Karachi, in Suit No.45 of 2002, whereby the suit instituted by the appellant for recovery of Rs.2,189,299/- was decreed only to the extent of Rs.456,425/- along with costs, while the remaining claim was declined. Being aggrieved by the said judgment and decree, the appellant has preferred the present appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001.

2. Briefly stated, the facts giving rise to the present controversy are that the appellant is a public limited company engaged in the business of leasing equipment, machinery and other movable assets. Respondent No.1 approached the appellant for obtaining on lease one imported reconditioned Turner Fulminosa Buffing Machine, whereupon an Equipment Lease Agreement bearing Contract No.99/M/15733 dated 29.06.1999 was executed between the parties. The lease was for a period of four years against an agreed monthly rental of Rs.41,555/-. In terms of the Agreement, the respondent also deposited a sum of

Rs.1,000,000/-. Respondents Nos.2 and 3 stood as guarantors for the obligations undertaken by respondent No.1.

3. The appellant's case, as set out in the plaint, was that the respondents had executed the Equipment Lease Agreement, Acceptance Receipt, Demand Promissory Note, and Guarantee and Indemnity documents in favour of the appellant. According to the appellant, the leased equipment continued to remain its property and, upon the occurrence of default, it became entitled to invoke the remedies stipulated under the Agreement. It was alleged that the respondents committed default in payment of the lease rentals and, despite issuance of notices and demands, failed to regularize the outstanding account. It was further alleged that a cheque for Rs.41,555/-, issued towards lease rental, was dishonoured. Consequently, notices, including a repossession notice, were issued to the respondents. The appellant thereafter instituted the banking suit seeking recovery of the outstanding lease rentals, additional lease rentals, agreed loss value and other amounts claimed under the contractual documents.

4. In the plaint, the appellant quantified its claim at Rs.2,189,299/-, after giving adjustment of the deposit of Rs.1,000,000/-. The claim comprised Rs.955,765/- towards lease rentals allegedly outstanding from 31.07.2000, Rs.365,854/- towards additional lease rentals, and Rs.1,867,680/- towards the agreed loss value, besides the consequential claim for future rentals and other contractual reliefs. The appellant also sought, in the alternative, repossession of the leased asset.

5. The respondents were duly served, whereafter an application for leave to defend was filed on behalf of all three defendants. As noticed by the learned Banking Court, the said application was subsequently dismissed for non-prosecution. The record further reflects that an earlier adjournment had been granted subject to payment of costs of Rs.2,000/-, which costs were not paid and, consequently, the benefit of such adjournment was not availed of. Thereafter, the learned Banking

Court proceeded to examine the material available on record and determine the amount, if any, actually recoverable by the appellant from the respondents.

6. It is pertinent to note that, following dismissal of the application for leave to defend, the learned Banking Court did not proceed to decree the entire amount claimed by the appellant merely on account of such dismissal. Instead, it examined the respective break-ups of the amounts claimed by the parties. The appellant had placed before the Court its calculation of the alleged outstanding amount at Rs.2,189,299/-, whereas the respondents had furnished a separate break-up reflecting a substantially lesser outstanding liability. The learned Banking Court observed that the documents produced by the appellant had remained unchallenged and that the underlying transaction itself was not in dispute. Upon examination of the material available on record, the learned Banking Court ultimately decreed the suit in favour of the appellant only to the extent of Rs.456,425/-. Hence, the present appeal.

7. Learned counsel for the appellant has contended that, having found the underlying transaction to have been established and having further noticed that the respondents had failed to prosecute their application for leave to defend, the learned Banking Court ought to have decreed the suit in its entirety. According to learned counsel, the Equipment Lease Agreement constituted a binding contractual arrangement between the parties, and the learned Banking Court failed to give due effect to the remedies expressly stipulated therein.

8. Learned counsel has placed reliance upon Article 17 of the Lease Agreement, contending that, upon the occurrence of default, the appellant was contractually entitled to declare part or the whole of the rent for the initial term immediately due and payable, take possession of the equipment or require its return, terminate the lease, and demand the agreed loss value in addition to compensation for loss and damages. It is further contended that, under the terms of the Agreement, the appellant was entitled to recover additional lease rentals on overdue

amounts, and that the learned Banking Court erred in declining the claim of Rs.365,854/- under this head. Learned counsel submits that the contractual rate stipulated in the Schedule had been expressly agreed between the parties and, therefore, could not have been disregarded by the learned Banking Court.

9. Learned counsel has also assailed the refusal to award future rentals and the agreed loss value, maintaining that both claims were expressly contemplated and provided for under the contractual documents executed between the parties. It is further contended in the grounds of appeal that the learned Banking Court failed to award the cost of funds and did not grant the relief sought in respect of return/recovery of the leased asset. Learned counsel lastly submits that the documentary evidence produced by the appellant remained wholly unrebutted and that the respondents had themselves admitted the underlying transaction and utilization of the leased facility. It is, therefore, argued that once the application for leave to defend had been dismissed for non-prosecution and the underlying transaction stood established from the record, there was no lawful justification for curtailing the appellant's contractual claim or restricting the decree to Rs.456,425/-. In support of his submissions, learned counsel has relied upon the following authorities/case laws: (1) Sajjad Gondal vs. ORIX Leasing Pakistan Limited (2011 CLD 1711) and (2) ORIX Leasing Pakistan Limited vs. Muhammad Haneef and another (2006 CLD 224).

10. On the other hand, none has appeared on behalf of the respondents. The same has been the position on the several preceding dates of hearing. In particular, on the last date of hearing, it was observed that, in the event of non-appearance on behalf of the respondents on the next date, the matter would be decided on the basis of the parties present and the material available on record. Since the instant appeal pertains to the year 2005 and, despite service of notices, the respondents have consistently failed to appear before this Court, we deem it appropriate, in the interest of justice, to proceed with the matter and decide the same on the basis of the available record.

11. We have heard the submissions of learned counsel for the appellant and carefully examined the material available on record.

12. The controversy involved in the present appeal does not essentially relate to whether the parties had entered into the lease transaction or whether respondent No.1 had availed the leased equipment. These aspects are substantially borne out from the record. The real question requiring determination is whether the appellant succeeded in establishing its entitlement to each of the heads constituting the amount claimed by it and whether the learned Banking Court was justified in restricting the decree to the amount which, upon examination of the record, it found to be actually recoverable.

13. There can be no cavil with the proposition that parties are ordinarily bound by the terms and conditions of a contract voluntarily executed by them. The Lease Agreement in the present case contains express provisions governing default and the consequences arising therefrom. Article 17 of the Agreement, upon which reliance has been placed by the appellant, undoubtedly confers certain remedies upon the lessor in the event of default, including acceleration of rent, repossession or return of the equipment, and termination of the lease coupled with a demand for the agreed loss value. However, the existence of a contractual remedy and the quantification of the amount recoverable pursuant thereto are two distinct matters. Merely because a lease agreement provides for certain remedies upon default does not, by itself, mean that every amount subsequently calculated by the lessor is liable to be decreed without scrutiny as to its basis, period and computation. The Court is required to determine the actual liability arising from the pleaded case and the material brought on record. Contractual stipulations cannot be considered in isolation from the factual circumstances in which a particular remedy is sought to be enforced.

14. The aforesaid distinction assumes significance in the present case, as the appellant did not confine its claim to unpaid monthly rentals. In addition thereto, it claimed additional lease

rentals, agreed loss value, future rentals and other amounts, ultimately quantifying its claim at Rs.2,189,299/-. On the other hand, the respondents furnished a break-up of Rs.288,220/-. It was also pointed out that only four rentals of Rs.41,555/- each remained unpaid, aggregating to Rs.166,220/-. Furthermore, the letter dated 13.09.2000, available in the R&P file and addressed to the Managing Director, EURO, regarding non-payment of lease rentals, reflected an outstanding amount of Rs.185,543/-. In these circumstances, the learned Banking Court was required to examine not merely whether the respondents had committed default, but also whether each component of the amount claimed by the appellant had been duly established. Upon such examination, the learned Banking Court ultimately determined the outstanding amount at Rs.456,425/-.

15. As regards the contention of learned counsel that, since the application for leave to defend filed by the respondents had been dismissed for non-prosecution, the learned Banking Court ought to have decreed the suit in its entirety, we are unable to subscribe to such proposition. The dismissal of an application for leave to defend for non-prosecution, by itself, did not entitle the appellant to a decree for the entire amount claimed in the plaint. No doubt, such dismissal had significant procedural consequences, and the learned Banking Court was justified in considering the documentary evidence produced by the appellant in the absence of any substantive defence on behalf of the respondents. Nevertheless, the appellant remained under an obligation to establish its entitlement to the amount claimed. The Court was, therefore, required to satisfy itself regarding the correctness, legal sustainability and recoverability of each component of the claim.

16. The approach adopted by the learned Banking Court in this regard is of particular significance. The learned Court noticed that the appellant had produced documentary evidence which remained unchallenged and that the underlying transaction itself stood established. At the same time, it compared the break-up furnished by the appellant with that submitted by the respondents. The record indicates that the respondents' own

break-up acknowledged the existence of outstanding lease instalments, thereby lending support to the fact that a liability on account of unpaid rentals did exist.

17. The learned Banking Court thereafter declined to allow the additional lease rentals and the agreed loss value claimed by the appellant. It is important to emphasize that the learned Banking Court did not reject or disbelieve the underlying lease transaction. Rather, upon considering the circumstances of the case and examining the competing calculations furnished by the parties, it confined the decree to the amount which it found to be outstanding and recoverable on the basis of the material available before it.

18. As regards the agreed loss value, Article 17 of the Agreement undoubtedly provides a contractual basis for the appellant to demand such amount upon termination or default. However, the appellant was still required to establish that the contractual conditions precedent for invoking the said remedy had been fulfilled and that the amount claimed represented the loss value applicable to the equipment in the circumstances of the case. Mere reproduction of the agreed loss value in a statement of account or break-up, without establishing the factual and contractual basis for its recovery, cannot, by itself, render the entire amount automatically recoverable, particularly where the appellant simultaneously seeks other monetary remedies arising from the same alleged default.

19. The same principle applies to the claim for future rentals. The appellant sought future rentals at the rate of Rs.41,555/- per month in addition to other amounts claimed under the Agreement. Once the lease was alleged to have gone into default and the appellant itself invoked the contractual remedies of termination and repossession, the Court was required to examine the precise legal and contractual basis for claiming future rentals and whether such rentals could validly be awarded in addition to the other remedies claimed by the appellant. The learned Banking Court did not find sufficient justification for allowing the entire claim towards future rentals, and no material has been

brought before us demonstrating that such finding was arbitrary, perverse or contrary to the contractual framework governing the transaction.

20. We have also considered the appellant's grievance that the learned Banking Court failed to award the entire amount of outstanding lease rentals claimed by it. On this aspect, the impugned judgment makes it evident that the learned Judge did not dispute the existence of outstanding rentals. Rather, the learned Court examined the break-up furnished by the respondents and found that certain instalments had not been accounted for therein. Accordingly, the outstanding rentals were added to the amount otherwise reflected in the respondents' calculation, and the costs earlier imposed upon the respondents were also taken into consideration. On such basis, a decree for Rs.456,425/- along with costs was passed.

21. The aforesaid exercise undertaken by the learned Banking Court is material to the determination of the present appeal. The learned Court did not merely accept the calculation furnished by the respondents. It scrutinized the respective break-ups and, where it found that outstanding rentals had not been accounted for, added the same and granted a decree accordingly. Thus, the impugned judgment reflects an endeavour on the part of the learned Banking Court to ascertain the actual amount emerging from the record, rather than determining the matter merely on the basis of the competing assertions of the parties.

22. The appellant has also relied upon Article 17 of the Agreement and contended that the learned Banking Court ought to have granted all the remedies available to it thereunder. We do not find merit in the submission in the manner in which it has been advanced. Contractual remedies may, depending upon the terms of the agreement and the circumstances of the case, be alternative, cumulative or subject to distinct factual and legal consequences. The Court cannot grant every conceivable remedy simultaneously merely because each such remedy finds mention in the contractual document. The nature and extent of the default, termination of the lease, possession or status of the

leased asset, outstanding rentals and the computation of any loss are all relevant considerations bearing upon the relief ultimately to be granted.

23. In the present case, the appellant's own pleadings disclose that a repossession notice had been issued and that the consequences of default had been invoked. At the same time, the appellant sought recovery of outstanding rentals, future rentals, additional lease rentals and the agreed loss value. In such circumstances, the Court was required to ascertain which components of the claim were legally and factually sustainable, rather than mechanically decreeing the aggregate amount calculated by the appellant.

24. Another circumstance which cannot be overlooked is that the respondents, despite having filed an application for leave to defend, failed to prosecute the same to its logical conclusion, with the result that their application was dismissed for non-prosecution. This undoubtedly weakened their position and left the documentary material produced by the appellant substantially un rebutted. However, such default on the part of the respondents did not, by itself, entitle the appellant to a decree for an amount which had otherwise not been established from the record. The learned Banking Court was, therefore, justified in determining the amount recoverable on the basis of the material available before it.

25. The contention regarding cost of funds also does not persuade us. Although the appellant has referred to its contractual and statutory entitlement, no sufficient basis has been demonstrated before us to establish that the learned Banking Court was bound to award the particular amount claimed under this head in addition to the other reliefs which it had found sustainable. An appellate Court cannot substitute a claimed calculation for a judicial determination unless such determination is shown to suffer from misreading or non-reading of material evidence, jurisdictional defect, material irregularity or an error of law.

26. We have carefully examined the grounds of appeal alleging that the learned Banking Court acted without jurisdiction, failed to exercise jurisdiction vested in it, committed material irregularity and failed to appreciate that the appellant's case had remained unrebutted. These grounds, however, substantially proceed on the premise that, since the underlying transaction stood proved and the application for leave to defend had been dismissed, the entire claim of the appellant ought to have been decreed. Such proposition, for the reasons already discussed, is too broad and does not furnish sufficient ground for interference with the impugned judgment and decree.

27. The learned Banking Court dealt with the matter after the respondents' application for leave to defend had failed on account of non-prosecution. It examined the documentary record, considered the competing break-ups and consciously distinguished between the amount of outstanding rentals which could be ascertained from the record and the additional contractual claims which, in its assessment, had not been sufficiently established in the circumstances of the case. We find no material on record demonstrating that the approach adopted by the learned Banking Court was perverse or that any material document having a decisive bearing upon the amount decreed was either ignored or misread.

28. It is also relevant that the respondents' pleadings did not dispute the basic lease transaction. The application for leave to defend, as reflected from the record, proceeded on the basis that respondent No.1 had acquired the Turner Fulminosa Buffing Machine under the lease arrangement and also referred to the value of the machine, the deposit and the rental structure. The principal dispute was thus with regard to the amount claimed and the additional liabilities asserted by the appellant. This circumstance further supports the conclusion that the learned Banking Court was justified in distinguishing the established liability towards outstanding rentals from the additional amounts which required independent justification.

29. We are also conscious of the fact that the present appeal has remained pending since 2005. The matter has been repeatedly fixed for hearing, yet the respondents have failed to appear on the last several dates despite service of notices and adequate opportunity having been afforded to them. The Court has, therefore, proceeded on the basis of the available record and after hearing learned counsel for the appellant. Nevertheless, the continued absence of the respondents cannot enlarge the contractual or evidentiary entitlement of the appellant. The appeal must still be adjudicated in accordance with the record and the applicable law.

30. Upon an overall consideration of the matter, we are of the view that the learned Banking Court correctly appreciated the essential controversy. The appellant succeeded in establishing the underlying lease transaction and its entitlement to recover outstanding rentals, but failed to establish its entire additional monetary claim of Rs.2,189,299/-. The learned Banking Court, therefore, adopted a considered approach by allowing the amount which, upon examination of the available material, it found to be actually outstanding and recoverable, while declining the remaining components of the claim.

31. The case-law relied upon by learned counsel for the appellant is distinguishable on facts and in the circumstances of the present case and, therefore, does not advance the appellant's case or render the impugned judgment and decree vulnerable to appellate interference.

32. For the foregoing reasons, we find no illegality, material irregularity, misreading or non-reading of evidence in the impugned judgment and decree warranting interference by this Court. Consequently, the instant First Appeal is **dismissed**, and the judgment and decree dated 25.04.2005 passed by the learned Judge, Banking Court No.II, Karachi, in Suit No.45 of 2002, are **maintained**.

JUDGE

JUDGE