

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1674 of 1997

DATE ORDER WITH SIGNATURE OF JUDGE

Plaintiff: **Muslim Commercial Bank Limited**
Through Mr. Mansoor-ul-Arfin
Advocate.

Defendants: **Through Mr. Asim Mansoor Khan,**
Advocate.

ICI Pakistan Ltd: **Through Mr. Khawaja Shoaib Mansoor,**
Advocate.

Faysal Bank: **Through Ms. Sehar Rana, Advocate.**

Contemnor No.1: **Through Mr. Mustafa Ali.**

Contemnor No.2: **Through Mr. Ali Aziz.**
Mr. Abdul Mubeen Lakho, Advocate.

For hearing of CMA No.7987/2007.

Date of hearing: **24.01.2019**

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ORDER

Muhammad Junaid Ghaffar J. Through this application, the Defendant has sought the following prayer:-

“It is therefore, prayed that this Honourable Court may be pleased to direct the Plaintiff to disclose full and complete details of the Gold and Silver and other securities claimed to have been deposited by the defendant with the plaintiff at their main branch and / or other branches at the time of the alleged claim for seeking financial assistance and / or at the time when the Defendant, if he at all did not in fact pledge the said securities for securing alleged the loans and debts as alleged in documents marked SR-47 and SR-48 and produce and deposit the same with full mark up and profits in this Honourable Court.

It is further prayed that the plaintiff be directed to deposit the original value of US\$ 711,600 FCBC along with profits and / or markup accrued thereon till date in this Honourable Court.”

2. Learned Counsel for the Defendant submits that in this matter leave to defend has been granted and Issues have been settled; whereas, thereafter, the Plaintiff has filed voluminous documents to lead evidence

and upon inspection of the same, occasion for filing of the listed application has arisen. He submits that Plaintiff has relied upon certain document dated 08.08.1995 (pg:195), wherein, it has been stated that some loan was given against pledge of gold and silver, of which the details have been solicited through listed application. According to him, if any such pledge was made, the Plaintiff may be directed to deposit the equivalent amount of Gold and Silver with full markup and profit before this Court. He further submits that Plaintiff may also be directed to deposit the original value of US \$ 711,600 against Foreign Exchange Bearer Certificate (FCBC) along with profit thereon before this Court. Per learned Counsel the Plaintiff has failed to disclose the alleged loan of FCBC in their Complaint, and therefore, the conduct of Plaintiff is unfair and after filing of these documents the Defendant is entitled for the prayer made in this application. He further submits that in the counter affidavit some handwritten documents have been relied upon by the Plaintiff purportedly issued by the Defendant, which is denied; whereas, it is mandatory upon the Plaintiff to make proper disclosure of the entire lien allegedly created by the Plaintiff on the assets of the Defendant. According to him it is the case of the Defendant that it is the root of the matter, and therefore the securities and amount being claimed are to be deposited with the Nazir of this Court.

3. On the other hand, learned Counsel for the Plaintiff submits that the documents being referred to pertain to some transaction of the Main Branch of the Plaintiff Bank; whereas, instant case is not of the said branch; and if at all, the Defendant has any case in respect of the prayer in this application, then an independent Suit ought to have been filed for claiming such amount and documents. Per learned Counsel every branch of a Bank is an independent branch; whereas, the evidence is yet to be recorded; therefore, no cause of action has accrued to file this application

and it is an attempt to delay the proceedings. As to the amount of US \$ and FCBC's he submits that there was some finance facility granted to the Defendant, which involved hypothecation from Dubai and to this a handwritten request was made; therefore, no case is made out. According to him this is a matter of evidence and at this stage such an application is misconceived and is therefore liable to be dismissed.

4. I have heard both the learned Counsel and perused the record. It is to be noted that this a Banking Suit for recovery of certain amount allegedly outstanding against Defendant. At the very outset, after going through the prayer in this application, learned Counsel for Defendant was confronted as to how such an application can be entertained by this Court at this stage of the proceedings, and to this he has relied upon Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("FIO 2001") and submits that the Plaintiff is required to make a complete disclosure of the claim alongwith supporting documents, and therefore, this application is maintainable. However, such argument appears to be misconceived inasmuch as admittedly this is a Banking Suit, wherein, there is a claim of the Bank against the Defendant and upon filing of leave to defend application, the same has been granted permitting the Defendant to contest this Suit and the said leave to defend application has been treated as a written statement as provided in law. It further appears that Issues have been settled and it is only upon filing of certain documents by the Plaintiff in support of leading of evidence, that the Defendant has filed this application on the ground that certain documents require the Plaintiff not only to make further and proper disclosure, but also deposit the amount as claimed therein. It is settled law that mere filing of documents to lead evidence gives no cause of action to make a claim on such basis. The Plaintiff has relied upon certain documents and it is for the Plaintiff to prove them in accordance

with law and proceed further; whereas, the Defendant is at liberty to contest and dispute any such document(s) and the evidence led on the basis of such documents again in accordance with law. However, one should remain mindful of the fact that this is not to be done in this manner through an application even before allowing the Plaintiff to lead its evidence based on such documents. If this is permitted, as pleaded and argued on behalf of the Defendant, then there would be no end or conclusion of a Suit. It is not that mere production of any document could give rise to make a claim; rather a counter claim. It may also be noted that this Banking Suit is to be dealt with under special law by this Banking Court and not as an ordinary Civil Court. There is perhaps no provision of making such an application under the FIO, 2001, or even under the Code of Civil Procedure, at least in terms of Section 151 CPC. Learned Counsel while making arguments did make a mention of "Discovery"; but with utmost respect, firstly this is not an application under Order XI of CPC; and secondly, nor this is the stage of any Discovery as the Issues have already been settled, whereas, under the FIO, 2001, even otherwise, such an application cannot be entertained like in an ordinary Suit, which has different parameters altogether. This Suit is only a recovery Suit under FIO, 2001, and it is for the Plaintiff to prove its claim. It has got nothing to do with the claim of Defendant to the effect that certain disclosure be directed to be made and or some amount as claimed is to be deposited with the Court. Leave to defend has been granted, whereas, Issues have been settled and instead of leading evidence, listed application has been filed with the aforesaid prayer. The same appears to be unjustified, unreasonable and an attempt to abuse the process of law and to burden the Court with no justifiable cause, and for this reason, at the very outset, learned Counsel was confronted as to grant of prayer in this application.

5. In view of the above discussion, by means of a short order this application (CMA No.7987/2007) was dismissed in the earlier part of the day by imposing cost of Rs.20,000/- to be deposited in the account of Sindh High Court Employees Benevolent Fund and these are the reasons thereof.

Judge

Ayaz P.S.