

**IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.B-33 of 2012

National Bank of Pakistan  
Versus  
Rafeh Enterprises (Pvt.) Ltd. & others

Date of Hearing: 30.09.2016

Plaintiff: Through Mr. Behzad Haider Advocate

Defendants: Through Mr. Mujahid Bhatti Advocate.

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- This suit is filed by the plaintiff for recovery of Rs.57,218,722.85 against the defendants. After issuance of notices the defendants have put their appearance and filed leave to defend application bearing CMA No.9248 of 2012.

2 Learned counsel for defendants at the very outset has taken me to Annexure P/41 and submits that the defendant is utilizing the finances credited through National Bank of Pakistan provided and sanctioned by the State Bank of Pakistan. He submits that all outstanding amount, as stated, is paid and no entry or disbursement is shown in pursuance of State Bank of Pakistan sanction and approval letter dated 11.05.2009. He has relied upon the category of entries in the statement of accounts to show that all these entries are transfer entries and nothing was credited or disbursed and there is no entry in the accounts to show that in fact any amount was availed by the defendants. Learned counsel further submits that the defendants have also filed a suit for accounts and damages in respect of the same subject matter wherein leave was granted to the plaintiffs wherein certain admissions were made by plaintiffs which relate to the statement of

accounts. Learned counsel also claims that an amount of Rs.14,28,750/- was recovered from sale of pledged stock which needs to be adjusted.

3. On the other hand learned counsel for the plaintiff submits that Annexure P/41 is irrelevant insofar as the present outstanding amount is concerned and the documents were filed on account of the fact that previously certain amount was availed and was paid accordingly. Counsel for plaintiff categorically states that nothing is being claimed on the basis of Annexure P/41. He submits that present finance agreements were executed on the basis of a request for settlement and renewal of limits by defendant No.1 which were allowed and accepted on 20.01.2011. In relation thereto, two finance agreements were executed, both have Packing Finance/ERF Part-I (pledged) and Packing Finance/ERF Part-I (Hypothecated) for 15 Million and Rs.35 Million respectively. The two agreements were executed on 28.02.2011. Learned counsel for plaintiff then again referred to the statement of account which starts from 01.07.2008 and submits that since it is in the form of running finance, therefore, debit and credit entries were shown. The defendants were however capped with the maximum limit of 15 million and 35 million respectively in relation to these two accounts.

4. I have heard both the learned counsel and perused material available on record.

5. Insofar as the solitary ground taken by the defendants, which relates to Annexure P/41 is concerned, it seems that it has no relevance or nexus with the current outstanding. This letter of the State Bank of Pakistan is dated 11.05.2009 whereas the finance agreement executed on 28.02.2011 is in relation to the request for renewal and settlement of limits. Admittedly, the two finance agreements were not denied and so also outstanding amounts thereunder. The only thing to be seen is as to whether in the statement of account any additional amount towards

markup or any other charges are being claimed. Learned counsel for the plaintiff in that regard has taken me to the entries in the statement of accounts to show that it is only the debit and credit entries in relation to the two finance agreements that are being considered.

6. In relation to the second facility for which maximum cap of Rs.35 million is provided the outstanding is shown as 34,979,745.81 (Page 911 of the file) and in relation to first facility the outstanding amount is shown as Rs.14,984,087.00 (Page 935 of the tile). This is only in relation to the principal amount. The plaintiff has separately provided a quarterly-base markup on the basis of two finance agreements which are available at page 913 for the second facility as Rs.4,810,814.00 and for the first facility available at page 939 as 2,444,076.00. Thus, the outstanding amount plus markup comes as:

|                              |                  |
|------------------------------|------------------|
| a) Second Facility           | Rs.34,979,745.81 |
| b) First Facility            | Rs.14,984,087.00 |
| c) Markup of second facility | Rs. 4,810,814.00 |
| d) Markup of first facility  | Rs. 2,444,076.00 |
|                              | -----            |
| Total outstanding amount     | Rs.57,218,722.81 |
| (-)Sale of pledged stocks    | Rs. 1,428,750.00 |
|                              | -----            |
| Total outstanding amount     | Rs.55,789,972.81 |
|                              | =====            |

7. In view of the above, I do not see any force in the arguments of learned counsel for defendants and in particular in view of the admission that the two independent agreements on the basis of the renewal/sanction was executed. Accordingly, the leave application is dismissed and the suit is decreed in the sum of Rs. 55,789,972.81 with cost of funds from the date of filing of the suit.

Dated: 30.09.2016

**Judge**