

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

Suit No.B-02 of 2017

Bankers Equity Limited
Versus
Galadari Cement (Gulf) Limited and others

Date	Order with signature of Judge
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Order on Application U/o I Rule 10 CPC (CMA No.20683/2021)

Date of hearing: 16.11.2022

Mr. Salman Hamid, advocate for intervener/applicant.

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Muhammad Shafi Siddiqui, J.- In this banking suit under Financial Institutions (Recovery of Finances) Ordinance, 2001 filed by plaintiff (Bankers Equity Limited) against Galadari Cement (Gulf) Limited and others, plaintiff essentially seeks recovery of Rs.337 Million together with future markup in consideration of mortgaged property (properties), hypothecated assets, pledged shares and leasehold rights of defendant in the mining licenses, as mentioned in the plaint. The suit is being contested by answering defendants.

Industrial Development Bank Limited however, has moved an independent application under order I Rule 10 CPC to be impleaded as being a necessary and proper party where they (plaintiff) claim to be one of the creditors and have a pari passu charge over the property/properties in question. The applicant also claimed to have independently moved J.C.M. 24 of 2003. It is thus claimed by the applicant that no effective decree could be passed in the instant proceedings in the absence of applicant.

I have heard learned counsel for applicant/intervener and perused material available on record.

On the strength of a Memorandum of Deposit of title deeds for guarantee provided by financial institutions, which also include the applicant, the mortgage was created, as disclosed in the second schedule of the subject Memorandum annexed with this application.

Paragraph 7 of the guarantee provides as under:-

“It is further agreed that the amount of the GUARANTEE provided by HBL shall be shared among Bankers Equity, HBL, UBL, MCB, ABL and IDBP in agreed ratio in Pak-Rupees by way of a Counter-Guarantee to be provided by them in favour of HBL in the amounts and to the extent as follows:

	<i>Rs. in ‘000</i>
<i>i) Bankers Equity</i>	<i>65,605</i>
<i>ii) NBP</i>	<i>147,612</i>
<i>iii) HBL</i>	<i>147,612</i>
<i>iv) UBL</i>	<i>147,612</i>
<i>v) MCB</i>	<i>88,567</i>
<i>vi) ABL</i>	<i>59,044</i>
<i>vii) IDBP</i>	<i>79,646</i>

<i>Total</i>	<i>735,698</i>
	<i>=====”</i>

In the respective ratios the counter guarantees were to be provided by the different financial institution in favour of HBL; the respective ratios identified in the counter guarantee would mark the respective lien/pari passu charge of all individual financial institutions and no claim of any one (financial institutions) could be presumed to overlap the claim of others and the applicant may maintain independent suit or any other remedy which they feel appropriate for recovery of its respective claim, if it is so advised.

The primary consideration however remains that Order I Rule 10(2) CPC which is being heard, does not allow the applicant to be either necessary or proper party. Necessary party is one who ought to have been joined as party in whose absence no effective decree could be passed whereas proper party is one whose presence before the Court is necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit. In the instant suit the

Court is adjudicating plaintiff's claim only and mortgage deed is sufficient to adjudge the respective bite of the creditors over the properties that include different financial institutions. The term 'question involved in the suit' refers to question between parties of a suit and not of the applicant who may also have a similar kind of claim but not the identical one.¹

Presence of the applicant/intervener is neither beneficial nor necessary as it is the parties to suit which may assist the Court in reaching to a conclusion for an effective decree, considering the claim of plaintiff and defendant, likely to be passed in the proceedings. Order I Rule 10(2) essentially seeks to adjudge claim of an individual or entity as the one whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit. At the most the plaintiff and the applicant could have been sailing in the same boat in the sense that they have respective claims for the recovery against the defendants based on their respective share/bite/pari passu charge over the property(ies) described above, but that does not mean that those independent claims would also become a claim in the instant suit².

Above are thus the reasons that compelled me to dismiss the application under order I Rule 10 CPC (CMA No. 20683/2021) vide short order dated 16.11.2022.

Dated:

Judge

¹ PLD 1994 SC 95 (Uzin Export Import Enterprises v. Union Bank of Middle East Ltd.)

² PLJ 1985 SC 461 (Pakistan Banking Council v. Ali Maohtaram Naqvi)