

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
Ist Appeal No. 41 of 2012

Date	Order with signature of Judge
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1. For hearing of CMA No.2859/2022.
2. For hearing of main case.
3. For hearing of CMA No.485/2012.

08.11.2023

Mr. Faiz Durrani, advocate for the appellant.

M/s. Syed Shafqat Hussain Shah Bukhari and Murtaza Hussain,
advocates for the respondents.

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We have heard the learned counsels and perused the record. In pursuance of the plaint and accompanied documents summons were issued and the respondents contested the matter by filing an application for leave to defend, which was allowed conditionally. However, the respondents have failed in its compliance. The learned Banking Judge then perused the contents of the plaint as well as Affidavit-in-Evidence which was filed on behalf of the appellant. Banking Judge found statement of account not in consonance with law. However, a separate application which accompanied the statement of account was not perused which attempted to make up for not filing such statement of account as required. Such documents could not be filed once the leave is decided conditionally. If an attempt has been made to file any additional documents after the leave application, it ought to have ended-up in granting unconditional leave. It was later found by the learned Banking Judge that neither the plaint nor the Affidavit-in-Evidence accompanied with the proper statement of account in terms of Section 9(2) of the Financial Institutions (Recovery of Finance) Ordinance, 2001, and as such the suit of the appellant bank was dismissed on this account. When confronted, Mr. Durrani conceded. All learned counsels then reached on

understanding that if the appeal is allowed, an unconditional leave be also granted to respondents.

The appeal is allowed as such and the judgment whereby the suit was dismissed and the order whereby the application for leave to defend was dismissed are set aside and an unconditional leave to defend the suit is granted. The Application for leave to defend is treated as written statement and the trial Court to proceed with the matter in accordance with law. The R&Ps be sent back to the trial Court.

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