

IN THE HIGH COURT OF SINDH AT KARACHI

First Appeal No.01 of 2022

M/s. Favourite Garments Industries & others
Versus
National Bank of Pakistan and another

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
------	-----------------------------------

Present: -

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Jawad Akbar Sarwana

1. For hearing of main case
2. For hearing of CMA No.66/2022 (stay).

.....

Dated 06.12.2023

Mr. Muhammad Salim Thepdawala, Advocate for appellant.

M/s. Ghulam Rasool Korai and Khalid Mehmood Siddiqui,
advocates for the Respondent No.1.

.....

J U D G M E N T

Muhammad Shafi Siddiqui, J. - This appeal arises out of a judgment and decree dated 29.09.2021 passed by the Banking Court in banking suit No.459/1997.

2. Very brief facts of the case are that a suit for recovery of Rs.2,08,94,051.15 [Rupees Two Crore Eight Lacs Ninety Four Thousand Fifty One and Paise Fifteen only] was filed by the National Bank of Pakistan against the appellant based on two facilities, that is Packing Finance (Hypo) limit Rs.5.00 million under State Bank of Pakistan refinancing scheme and the other finance is Packing Finance (Pledge) limit to the tune of Rs.6.00 million and were availed in the account. It is in fact a account of running finance as from time to time the finances to such limits were availed and utilized and the account was debited/credited accordingly.

3. Initially, a request for the enhancement of finance limit under the State Bank of Pakistan refinancing scheme was made on 08.10.1992 as by that time they were availing finance limit upto

Rs.9.00 million (both). When such request was materialized in the shape of sanction of the two finances referred above, an amount of Rs.1,387,301.14 was brought forward in the said account wherein the two facilities, the subject matter of the suit, were availed.

4. The suit was originally dismissed on 18.05.1999 by a judgment of the Banking Court No.III, however, on an appeal preferred by the National Bank of Pakistan as First Appeal No.74/1999, the case was referred back for its disposal strictly in terms of the issues, as framed, within the prescribed period. The suit was then again decided by virtue of the impugned judgment dated 29.09.2021 and was decreed jointly and severally for the sum of Rs.17,411,702.15/- together with cost of funds as notified by the State Bank of Pakistan to be calculated from the date of default till realization of the decretal amount.

5. The prime objection of the appellant was that of the adjustments of remittances, which were not accounted for, as claimed. Such remittances were disclosed by the appellant in terms of two separate statements available at page-461 and 487, which are reproduced as under with last vertical column added by this Court, for clarity of the adjustments made:-

STATEMENT OF REPAYMENT OF LOAN
A/C No.6040-4

*THROUGH NEGOTIATION OF EXPORT DOCUMENTS/REALIZATION
OF EXPORT BILLS OF M/S FAVOURITE GARMENTS IND. KARACHI*

S.No.	Bank Credit Advice No.	Date	Amount Rs.	Annexure Marked	Entries showing adjustment of remittance
1	HMR/FDBP/158/518/93	02.10.93	921,806	B-1	277 Page of A/C
2	HMR/FDBP/158/0614/93	28.12.93	529,081	B-2	279 Page of A/C
3	HMR/FDBP/158/0047/94	16.02.94	414,099	B-3	281 Page of A/C
4	HMR/FDBP/158/0079/94	17.03.94	488,163	B-4	281 Page of A/C

5	HMR/FDBP/158/0093/94	31.03.94	491,033	B-5	281 Page of A/C
6	HMR/FDBP/158/0124/94	20.04.94	491,840	B-6	283 Page of A/C
7	EXPORT-94	07.05.94	200,000	B-7	283 Page of A/C
8	HMR/FDBP/158/0153/94	19.05.94	612,181	B-8	283 Page of A/C
9	HMR/FDBP/158/0205/94	30.06.94	540,964	B-9	285 Page of A/C
10	HMR/FBCD/158/0310/94	07.09.94	696,638	B-10	285 Page of A/C
11	HMR/FBCD/158/0357/94	20.11.94	304,467	B-11	285 Page of A/C
12	HMR/FDBP/158/0025/95	26.01.95	432,378	B-12	297 Page of A/C
TOTAL			6,122,650/=		

STATEMENT OF REPAYMENT OF LOAN
A/C No.6007-5

***THROUGH NEGOTIATION OF EXPORT DOCUMENTS/REALIZATION
OF EXPORT BILLS OF M/S FAVOURITE GARMENTS IND. KARACHI***

S.No.	Bank Credit Advice No.	Date	Amount Rs.	Annexure Marked	Entries showing adjustment of remittance
1	HMR/FDBP/158/0005/93	04.01.93	277,632	A-1	267 Page of A/C
2	HMR/FDBP/158/0032/93	13.01.93	161797	A-2	267 Page of A/C
3	HMR/FDBP/158/0120/93	01.03.93	362,250	A-3	269 Page of A/C
4	HMR/FDBP/158/0067/93	02.02.93	340,562	A-4	269 Page of A/C
5	HMR/FDBP/158/0142/93	15.03.93	357,828	A-5	271 Page of A/C
6	HMR/FDBP/158/0206/93	24.04.93	230,773	A-6	273 Page of A/C
7	HMR/Adv Payment/CR/93	14.03.93	91,471	A-7	Not remitted
8	HMR/FBCD/158/0218/93	21.05.93	103,613	A-8	273 Page of A/C
9	HMR/FUBP/158/0712/93	20.05.93	580,514	A-9	273 Page of A/C
10	HMR/EXP/158/93/FBCD/ 0254/93	08.06.93	50,953	A-10	275 Page of A/C
11	HMR/FUBP/158/0745/93	17.06.93	634,015	A-11	273 Page of A/C
12	HMR/FDBP/158/0329/93	08.07.93	198,411	A-12	275 Page of A/C
13	HMR/FDBP/158/0329/93	09.08.93	110,280	A-13	275 Page of A/C
14	HMR/FDBP/158/0388/93	07.08.93	178,674	A-14	275 Page of A/C
15	HMR/FDBP/158/0435/93	28.08.93	596,793	A-15	275 Page of A/C
16	HMR/FDBP/158/0436/93	28.08.93	237,583	A-16	291 Page of A/C
17	HMR/FBCD/158/0460/93	17.11.93	281,600	A-17	277 Page of A/C
18	HMR/FBCD/158/0461/93	14.10.93	8,236	A-18	277 Page of A/C
19	HMR/FDBP/158/0502/93	26.09.93	511,030	A-19	291 Page of A/C
TOTAL			5,314,015/=		

6. Each and every remittance that came on account of the export of the goods were accounted for and shown in the statement of account, except one entry of Rs.91,471/- at serial No.7 of the statement at page-487 as it was never remitted, hence not accounted for.

7. Mr. Salim Thepdawala, learned counsel for appellants submits that if that is the case, then perhaps nothing is due and outstanding. Mr. Thepdawala is incorrect in the sense that the account wherein the facilities were provided is in fact a running finance of the two facilities disclosed above and the limits of the two finances were provided to the extent of Rs.5.00 million and Rs.6.00 million and invariably such limits were availed so the remittance and adjustment doesn't matter. It is thus inconceivable that the remittances, as objected, were not accounted for and if they have been adjusted, there should not be any amount from time to time due and outstanding as there were independent withdrawals of amount to the limits of finances, which have been disclosed in the statement of account.

8. We are now left with the opening entry of Rs.1,387,301.14 which in fact is the balance carried forward in the statement of account at page-267. This balance was carried forward on 2nd January, 1993, as this amount is the outstanding brought forward on account of earlier limits availed by the appellant and such limit of finances were extended at the request of the appellant itself by virtue of a letter dated 08.10.1992 and such finances were renewed and enhanced at the request of the appellant and secondly the leftover amount of the earlier finance brought forward to the statement of

account filed shows an entry of the outstanding amount of Rs.1,387,301.14, which was not challenged.

9. Although the subject suit relates to the two finances granted on 27.01.1993, however, it is only an extension of similar finances granted earlier, hence the claim of the respondent in respect of the suit includes the entire amount recoverable extended in the said account and that cannot be limited to the extent of Rs.5.00 million and Rs.6.00 million respectively. Appellant may have deposited the amount more than the finances but since it is a running finance, he was continuously availing such limits and hence was paying periodically. The appeal as such merits no consideration and is dismissed along with pending application.

JUDGE

JUDGE

Ayaz Gul