

Judgment Sheet

**IN THE HIGH COURT OF SINDH AT KARACHI**  
(Banking Jurisdiction)

Suit No.B-48 of 2022

Summit Bank Limited v. Mr Farooq Nasir and Another

Plaintiff : Summit Bank Limited through its duly constituted attorney Mr. Faizan through Mr Ali T. Ebrahim, Advocate

Defendant No.1 : Mr Farooq Nasir, Nemo.

Defendant No.2 : Mrs Uzma Farooq. Nemo.

Dates of Hearing : 04.10.2023 and 11.10.2023

Date of Judgment : 21.12.2023

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

Jawad Akbar Sarwana, J.: This is a banking suit for recovery of Rs.303,091,400.39 along with the cost of funds, etc., filed by the Plaintiff under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (hereinafter referred to as “the FIO, 2001”).

2. The Plaintiff is a financial institution licensed by the State Bank of Pakistan to carry on banking business under the Banking Companies Ordinance, 1962. The Plaintiff is henceforth referred to as “the Plaintiff-Bank. The Plaintiff-Bank falls within the meaning of a “Financial Institution” as defined in Section 2(a) of the FIO, 2001.

3. Defendant No.1 is a sole proprietor doing business as “The Real Investment”, having a place of business at two addresses mentioned in the title of the suit, with both the addresses located in Karachi. According to the information available with Plaintiff-Bank, Defendant No.1 also maintains residences at two places at the two residential addresses mentioned in the title of the plaint, both of which residences

are located in Karachi. Defendant No.2 is the wife of Defendant No.1. She has disclosed two addresses to Plaintiff Bank, with one of the residential addresses being different from the two addresses disclosed by his spouse, Defendant No.1. Her residential addresses are also in Karachi. The two Defendants have been availing from the Plaintiff-Bank finance as defined under section 2(d) of the FIO, 20011. These finance facilities have been renewed from time to time up to the date of default of the payment obligations arising from such finance. To secure the finance, the Defendants executed Personal Guarantees in favour of the Plaintiff-Bank. As such the two Defendants fall within the definition of "Customer" within the meaning of Section 2(c) of the FIO, 2001.

4. The Defendant No.1 availed Term Finance facility from the Plaintiff-Bank which was renewed extended/enhanced/amended and made available to the Defendants from time to time vide Finance Facility Offer Letters dated 31.12.2018 (Ex."PW-1/3"), 14.02.2019 (Ex."PW-1/4"), 30.04.2019 (Ex."PW-1/5"), 03.09.2019 (Ex."PW-1/6") and 05.12.2019 (Ex."PW-1/7"). At the outset, with respect to the Term Finance facility of PKR 250,000,000/-, the Plaintiff-Bank and the Defendants entered into an Agreement of Finance on Mark-Up Basis dated 31.12.2018 (Ex."PW-1/8"). As an acknowledgement of the liabilities owed to the Plaintiff-Bank for the said Term Finance facility, Defendants also executed a Demand Promissory Note dated 31.12.2018 (Ex."PW-1/9").

5. In consideration of the above-mentioned Term Finance facility that the Plaintiff-Bank sanctioned to the Defendants, the Defendants as a continuing collateral and security thereof, executed Personal Guarantee(s) dated 31.12.2018 wherein they personally, jointly and severally, guaranteed, inter alia, the repayment obligations of the Defendant No.1 as owed to the Plaintiff-Bank (Ex."PW-1/10" and "PW-1/11").

6. In further consideration of the Term Finance facility that the Plaintiff-Bank had sanctioned to Defendant No.1 as a continuing

collateral and security thereof, the Defendant No.1 created a lien over a USD deposit account held with the Plaintiff-Bank vide Letter of Set-Off dated 20.06.2019 (Ex.“PW-1/12” and “PW-1/13”).

7. Finally, in further consideration of the Term Finance facility that the Plaintiff-Bank had sanctioned to the Defendants as continuing collateral and security thereof the Defendants created a mortgage in favour of the Plaintiff-Bank by way of deposit of memorandum of original title deeds over all that leasehold immovable property bearing Shop No.1 Ground Floor, admeasuring 3,043 Square Yards Plot No.11-C, Al-Murtaza Commercial Lane No.2, Phase VIII-A, DHA Karachi (Mortgaged Property) and in this regard executed a Memorandum of Deposit of Title Deeds dated 03.09.2019 (Ex.“PW-1/14”).

8. Although Defendant No.1 fully availed the aforementioned Term Finance facility as sanctioned by the Plaintiff-Bank, as detailed above, the Defendants failed to make timely repayments of the finances duly availed. Despite various reminders, when the Defendants failed to abide by the terms and conditions of the aforesaid agreements, failed to repay the Term Finance facility availed by them, and defaulted on their repayment obligations owed to the Plaintiff-Bank, making it evident that the Defendants had irretrievably defaulted, the Plaintiff-Bank filed this Suit in the Banking jurisdiction of the High Court of Sindh at Karachi.

9. The particulars of the finance as required under Section 9(3) of FIO, 2001 are set out in the plaint along with Statements of Accounts as follows:

<b>Term Finance Facility</b>	<b>Amount (PKR)</b>
A) Principal Availed	250,000,000.00
B) Principal Repaid/ Adjustments	15,855,000.00
C) Principal Outstanding (A-B)	234,145,000.00
D) Mark-Up accrued	110,806,602.54

E) Mark-Up Repaid	41,860,202.15
F) Mark-Up Outstanding (D-E)	68,946,400.39
Total Outstanding (C+F)	303,091,400.39

10. During the Covid-19 pandemic, in terms of general instructions from the State Bank of Pakistan vide BPRD Circular No.13 of 2020, the markup for the period accrued for the period of May 2020 to December 2020 was posted in the deferred markup statement, and Defendants were liable to fulfil their payment obligations inclusive of this amount in the sum of Rs.68,946,400.39 being claimed as Mark-up Outstanding.

11. Upon default on the part of the Defendants, the Plaintiff-Bank also exercised its lien over the USD deposit account of Defendant No.1 and adjusted USD70,000/- against the outstanding principal amount.

12. In light of the foregoing, Defendant is liable to pay Plaintiff-Bank a sum of PKR 303,091,400.39 along with the cost of funds from the date of default until realization. The Plaintiff-Bank has also sought the cost of the suit.

13. The Plaintiff-Bank's prayed for Judgment and Decree as follows:

- A) For payment of PKR 303,091,400.39 in respect of the outstanding, due and payable Term Finance facility along with Cost of Funds from the date of default until realization at the prevalent rate specified by the State Bank of Pakistan.
- B) For attachment and sale of the Mortgaged Property mentioned in paragraph 7 of this Plaint and payment of sale proceeds towards adjustment of Plaintiff's claim in the present suit.
- C) For attachment and sale of the assets of the Defendants and payment of the sale proceeds towards adjustment of the Plaintiff's claim in the present suit.

D) Cost of the suit.

E) Any other relief deemed fit by this Court.

14. Summons were issued pursuant to Section 9(5) of FIO, 2001, in Form No.4 in Appendix "B" to CPC, 1908, by all modes to the several addresses of the Defendants, both the last known residential and business addresses as given in the title of the Plaint and described hereinabove as well as by publication in two daily newspapers, namely, "THE NEWS" dated 24.11.2022 and "JANG" dated 24.11.2022. Yet the defendants failed to appear. No leave to defend application was filed. Therefore as per the diary of the Additional Registrar (O.S.) dated 23.12.2022, the banking suit was ordered to be fixed in Court for final disposal.

15. After hearing the Counsel for the Plaintiff-Bank this bench vide order dated 18.05.2023, directed the Plaintiff-Bank to file Affidavit-in-Evidence of the authorized officer and be present in Court for evidence on 29.05.2023. Meanwhile, the Defendants were given yet another chance, if they so desired, to cross-examine the Plaintiff's witness, failing which their Cross-Examination would be marked "Nil". Thereafter, the Court issued Court Notices to the Defendants vide orders dated 15.05.2023, 29.05.2023, 23.08.2023 and 13.09.2023 to attend the hearings and cross-examine the Plaintiff-Bank's witness. According to the Bailiff's report, notices were validly served on the Defendants at the last known addresses, including by pasting but neither Defendants nor Defendants' Counsel entered an appearance.

16. Pursuant to the said aforesaid order, the Plaintiff-Bank on 13.09.2023, filed Affidavit in Ex-Parte Proof of its authorized representative, namely Faizan s/o Kassam Ali who produced the following documents:

- a. Affidavit-in-Ex-parte Proof as Exhibit PW-1/1;
- b. Copy of his CNIC as Exhibit PW-1/1-A;

- c. Power of Attorney (2 sheets) as Exhibit PW-1/2 (Original seen and returned);
- d. First Finance Facility Letter dated 31.12.2018 (5 sheets) as Exhibit PW-1/3 (Original seen and returned);
- e. Second Finance Facility Letter dated 14.02.2019 (3 sheets) as Exhibit PW-1/4 (Original seen and returned);
- f. Third Finance Facility Letter dated 30.04.2019 (3 sheets) as Exhibit PW-1/5 (Original seen and returned);
- g. Fourth Finance Facility Letter dated 03.09.2019 (2 sheets) as Exhibit PW-1/6 (Original seen and returned);
- h. Fifth Finance Facility Letter dated 05.12.2019 (2 sheets) as Exhibit PW-1/7 (Original seen and returned);
- i. Agreement for Financing on Mark-up Basis dated 03.12.2018 (12 sheets) as Exhibit PW-1/8 (Original seen and returned);
- j. Promissory Note dated 31.12.2018 (1 sheet) as Exhibit PW-1/9 (Original seen and returned);
- k. Personal Guarantee of Farooq Nasir (Defendant No.1) dated 05.12.2018 (5 sheets) as Exhibit PW-1/10 (Original seen and returned);
- l. Personal Guarantee of Uzma Farooq (Defendant No.2) dated 05.12.2018 (5 sheets) as Exhibit PW-1/11 (Original seen and returned);
- m. Letter of Set-Off dated 20.06.2019 (4 sheets) as Exhibit PW-1/12 (Original seen and returned); Letter of Lien and Encashment dated 20.06.2019 (1 sheet) as Exhibit PW-1/13 (Original seen and returned);
- n. Memorandum of Deposit of Title Deeds dated 03.09.2019 (3 sheets) as Exhibit PW-1/14 (Original seen and returned);
- o. Original Bank Statement (20 sheets) as Exhibit PW-1/15; and, original BPRD Circular Letter No.13 of 2020 dated 26.03.2020 (1 sheet) as Exhibit PW-1/16.

17. As no one was present on 13.09,2023 and 18.09.2023, this bench cross-examined the Plaintiff-Bank's Witness on 18.09.2023 and marked the cross-examination by Defendant as "Nil". The matter was listed for final arguments.

18. On 11.11.2023, the Court heard arguments of the learned counsel for the Plaintiff and perused the record. Since Defendant's failed to file Leave to Defend Application nor any other assistance was provided by them, the Plaintiff-Bank's claim as set up is deemed to be admitted. Even otherwise perusal of the material placed on record shows that the Defendants had availed the Term Finance Facility and had failed to repay and adjust the said facility though the Plaintiff-Bank requested the Defendants to fulfil their payment obligations.

19. The learned Counsel for the Plaintiff contended that all the amounts due and payable by the Defendant was available as entries in the Statements of Accounts annexed with the Plaint and the same Statement of Accounts produced in evidence. The Statement of Accounts support the transactions of finance between the parties. The Statements are maintained by the Plaintiff-Bank as per the requirements of the State Bank of Pakistan, and are in compliance with the law. The Statement of Accounts have been produced in evidence duly certified under the Banker's Book of Evidence Act, 1891. He added that the amount of principal and markup has been shown separately which has been charged in accordance with the agreement/s between the parties. In the circumstances, the Plaintiff's version of the facts is liable to be taken as true and correct.

20. In view of the aforesaid facts and circumstances and in terms of the breakup and Statement of Accounts and keeping in view the fact that there is no rebuttal to the contents of the Statement of Account, I, **decree the suit of the Plaintiff-Bank against the Defendants jointly and severally in the sum of Rs.303,091,400.39 along with cost of funds from the date of default till realization of the amount at the**

current rate as determined by the State Bank of Pakistan in terms of Section 3 of the FIO, 2001.

21. The Plaintiff is also entitled to realization of the amount by sale of the mortgaged property. The suit of the Plaintiff is also decreed as such.

22. The Plaintiff shall also be entitled to the Costs of the Suit.

23. Following the decree, the Banking Suit is converted into execution proceedings and the Plaintiff/Decree-Holder is directed to file the particulars of the mortgaged property and other assets of the Defendant/Judgment-Debtor, if any, for the consideration of the Court within four weeks.

24. Office to prepare the decree accordingly and ensure compliance as above.

J U D G E

Announced by me.

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