

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special High Court Appeal No.45 of 2012

M/s. Dewan Salman Fibre Limited

Versus

M/s Soneri Bank Limited

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Omar Sial.

Hearing (priority) case

1. For hearing of CMA No.143/2015 (94 CPC).
2. For hearing of main case.
3. For hearing of CMA No.552/2012 (stay).

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Dated 18.01.2024

Mr. Aman Aftab, Advocate for the Appellant.

Mr. Nabeel Kolachi, Advocate for the Respondent

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A suit for recovery under Financial Institutions (Recovery of Finances) Ordinance, 2001 [FIO, 2001] was filed before this Court. On service of notices and summons, leave application was filed by the appellant which was pending adjudication at the relevant time when impugned order/decreed was passed. During pendency of the leave application, a Chartered Accountant was appointed in terms of order dated 12.08.2010. As against the report of the Chartered Accountant, objections were filed by the appellant. On the day when the objections were heard and leave application was also fixed, somehow it is skipped from the attention of the Bench that leave application was pending and relying on the report, the suit was decreed for the rest of the amount, as there was already a preliminary decree passed in relation of an amount which was admitted in the leave application.

We have heard learned counsel for the parties and perused the material available on record.

Admittedly the leave application on the day when the suit was decreed, was pending and the suit was decided on the

strength of commissioner's report and objections filed thereon. The leave application ought to have been allowed or dismissed and only then the matter could have proceeded further as to the merit of the suit but that has not been done. In terms of Section-11 of FIO, 2001 an interim decree could have been passed in respect of the admitted amount but not in respect of the amount which was and is disputed and a report from Chartered Accountant was required as found inevitable for the purpose of hearing leave application.

We therefore, with the understanding of both learned counsels deemed it appropriate that since a cart has been put before the horse; i.e, a decree was passed without deciding leave application. The decree to the extent of disputed amount is set aside, whereas, preliminary decree to the extent of Rs.500/- million is maintained as being admitted amount. The leave application be decided by the learned single Judge preferably in three months' time.

The amount of the preliminary decree passed on the admission that is Rs.500/- million, be deposited in four weeks' time with the executing court and the Respondent Bank would be at liberty to withdraw it subject to notice to the borrower. In case the said amount is not adjudged to be outstanding, appropriate orders in terms of frame of the FIO, 2001 could be passed at the time of passing final decree, as agreed.

The appeal in view of the above stands disposed off along with pending applications.

JUDGE

JUDGE