

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

First Appeal No.46 of 2019

Kausar Mallkick and others
Versus
Bank Islami Pakistan Limited and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Justice Ms. Sana Akram Minhas.

Hearing case (priority)

1. For hearing of main case.
2. For hearing of CMA No.2016/2019 (Stay).

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Dated 22.04.2024

Mr. Khaleeq Ahmed, Advocate for Appellants.
Syed Aijaz Hussain Shirazi, Advocate for Respondent No.1.

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Muhammad Shafi Siddiqui, J.- House finance was availed by the appellants and Amortization plan for its repayment was reduced into writing. A “Shirakat-ul-Milk” agreement was executed on 5th April, 2008 along with personal guarantee, undertaking to purchase and monthly payment plan/Amortization were provided. On default, respondent preferred suit for recovery which was decreed; hence this appeal.

2. Mr. Khaleeq Ahmed, learned counsel for appellants/borrower, as a primary argument submits that those “repayments” made by the appellants in respect of the availed house finance in the shape of “payment slips” were not reflected in the statement of account. This being a prime argument, we have enquired from Mr. Aijaz, learned counsel for Respondent No.1 that if such amounts are disclosed in the statement of account, he has taken us to such entries available in the statement of account. Mr. Aijaz has attempted to demonstrate that the appellants have made payment

of 61 installments as against 192 total installments via Amortization plan at page-129 of file, payable in 16 years. This Amortization is not denied by Mr. Khaleeq Ahmed. He also concedes that the repayments were made through pay slips available with appeal and statement, which are common. He submits that total installments were 192 and the total repayment, at the conclusion of agreement required was Rs.8.66 million. As against that no doubt certain payments have been made but those were only partial and were/are duly reflected in the statement of account. The statement of account was duly certified in terms of the Bankers' Book Evidence Act, at the footnote in the shape of certificate is available at page-269; this being the second submission is also not germane to the facts of the case.

3. It seems that Mr. Khaleeq Ahmed, learned counsel appearing for the appellants is confused in between the deposit slips, which, according to him, were not reflected in the statement. This is not correct. Each and every deposit slip, which have been separately filed by Mr. Khaleeq, are demonstrated to have been disclosed in the statement of account and hence against the appellants' claim, Rs.2.8 million, which they claimed to have been deposited via pay slips, Rs.3.4 million were adjusted. Perhaps there may have been some additional amount deposited which the appellant is not aware of and as this is conceded by the respondent.

4. Learned Banking Court decreed the suit to the extent of the principal outstanding amount existed at the relevant time which was adjudged as Rs.3 million with the cost of funds etc. With this understanding of facts where amount deposited were demonstrated and that statement of account was neither devoid of the certificate

required under the Bankers' Book Evidence, the case of appellants is not made out.

5. The two grounds as raised by Mr. Khaleeq Ahmed are not tenable, as the amount adjudged and disclosed in the decree are not required to be interfered and consequently the appeal merits no consideration and is dismissed along with pending application(s).

JUDGE

JUDGE

Ayaz Gul