IN THE HIGH COURT OF SINDH AT KARACHI

I.A. No. 16 of 2022

[National Bank of Pakistan Limited .....v..... M/s. Saudi Pak Industrial and Agriculture Investment Company Pvt. Limited]

I.A. No. 17 of 2022

[National Bank of Pakistan Limited .....v..... M/s. Saudi Pak Industrial and Agriculture Investment Company Pvt. Limited]

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I.A. No. 18 of 2022

[National Bank of Pakistan Limited .....v..... M/s. Saudi Pak Industrial and Agriculture Investment Company Pvt. Limited]

Present: **Mr. Justice Yousuf Ali Sayeed**
Mr. Justice Arbab Ali Hakro

Appellant through	:	Ms. Naheed A. Shahid, Advocate.
Respondent through	:	Mr. Abdul Qayyum Abbasi, Advocate a/w M/s. Raja Safeer Ahmed, Muhamad Abdullah and Imran Rind, Advocates.
Dates of Hearing	:	12.09.2024, 24.09.2024 & 03.10.2024
Date of Decision	:	29.10.2024

J U D G E M E N T

Arbab Ali Hakro, J:- These three appeals have been filed assailing the common Judgment dated 11.12.2021 and the decree prepared in pursuance thereof, dated 23.12.2021 ("**Impugned Judgment & Decree**"), rendered by the learned Banking Court No. III at Karachi ("**Trial Court**") in three Suits bearing Nos. 70, 71, and 72 of 2017 ("**Suits**"), instituted by the Respondent-Company against the appellant. Given that the controversy in all these appeals is predicated upon the Impugned Judgment & Decree, the said appeals shall be adjudicated through this common edict.

2. The brief facts precipitating the filing of these Appeals are that the respondent, being a provider of financial facilities, instituted suits against the appellant in respect of three bank guarantees for recovery due to the failure and default in repayment of financial liabilities by M/s. Enems Engineering, M/s. Resco Enterprises, and M/s. Moosani Traders ("**Principal Debtors**"). The Customers availed themselves of the Fiduciary Credit Facility and the Morabaha Facility in 1992, which were granted by the respondent at the appellant's request. As surety,

the appellant executed three bank guarantees in favour of the respondent, namely, 255 dated 25.04.1992, 256 dated 25.04.1992, and 445 dated 01.06.1992. The trial Court, having examined the pleadings of the parties, framed the following issues for its determination: -

1) *Whether any cause of action has ever accrued to the plaintiff to file the instant suits?*
2) *Whether the plaintiff has obtained the Guarantees by misappropriation and/or of concealment necessary agreements/ documents of principal debtors?*
3) *Whether the plaintiff is entitled to claim the suit amounts of Guarantees No.255 dated 25.04.1992, 256 dated 25.04.1992 & 445 dated 01.06.1992 issued by the defendant in the capacity of Guarantor, in absence of Principal Debtors? If so, to what extent?*
4) *What is the legal effect of the defendant's clear admission of liability in terms of its letter dated 19.11.1995 (annexure "H/I" to the plaint) and other such admissions for payment of the principal amount of Rs.163.50 million under the nine (09) Guarantees issued in favour of the plaintiff?*
5) *In view of the defendant's honouring six out of its nine Guarantees issued on the same terms and conditions in favour of the plaintiff, by making payment to the plaintiff in the sum of Rs.90 million (being the amount of the six Guarantees), can the defendant withhold payment of its remaining three Guarantees? If not to what effect?*
6) *Whether the plaintiff is entitled to any markup, claimed in absence of any agreement with the defendant?*
7) *Whether the suits are liable to be dismissed with special cost?*
8) *What should the decree be?"*

3. Evidence was presented by both parties, and following the conclusion of the final arguments in the suits, the impugned Judgment and Decree was rendered. The trial Court, through the impugned Judgment and Decree, adjudicated the suits in the following manner: -

> *"The suit bearing No.70 of 2017 is thus decreed in favour of the plaintiff and against the defendant in the sum of Rs.20,000,000/- together with the cost of funds, as notified by the State Bank of Pakistan, to be calculated from the date of the bank guarantee subject matter of this suit till realization of the decretal amount. The plaintiff shall also be entitled the costs of the suit.*
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> *The Suit bearing number 71 of 2017 is thus decreed in favour of the plaintiff and against the defendant in the sum of Rs.23,500,000/- together with the cost of funds, as notified by the State Bank of Pakistan, to be calculated from the date of the bank guarantee subject matter of this suit till realization of the decretal amount. The plaintiff shall also be entitled the costs of the suit.*

> *The Suit bearing number 72 of 2017 is thus decreed in favour of the plaintiff and against the defendant in the sum of Rs.30,000,000/- together with the cost of funds, as notified by the State Bank of Pakistan, to be calculated from the date of the bank guarantee subject matter of this suit till realization of the decretal amount. The plaintiff shall also be entitled the costs of the suit."*

4. In this context, detailed arguments were presented by the respective learned counsel addressing the pivotal issue of whether the Impugned Judgment & Decree were rendered in accordance with the applicable law.

5. Mrs. Naheed A. Shahid, learned counsel, advocated the case of the appellant and premised her argument on the contention that the impugned Judgment rendered by the learned trial Court is not in consonance with the law, as the principal debtors/customers were neither arrayed as parties to the suit nor were any evidence adduced by them. Therefore, the trial Court, without hearing the stance of the principal debtors, rendered the impugned Judgment & Decree, which is unsustainable in the eyes of the law. She further contended that the trial Court neither evaluated the financial documents of the principal debtors/customers nor arrayed them as parties. Without filing the financial documents by the customers/principal debtors, the trial Court could not reach a just and fair conclusion. Instead, the trial Court rendered the impugned Judgment solely on the premise that the appellant had admitted liability as a guarantor through its letters regarding six bank guarantees. The remaining bank guarantees, which are the subject matter of the suits, ought to have been honoured by the appellant. However, the appellant emphatically denied issuing those three bank guarantees in favour of the customers/principal debtors, asserting that they are fictitious. She further articulated that the appellant, as the successor of Mehran Bank Limited, through a letter dated 04.01.1998 issued by the State Bank of Pakistan, unequivocally stated that the appellant is not liable to pay any amount claimed by the respondent in the suit. She emphatically submitted that the appellant, as a guarantor, honoured the bank guarantees, which were independent arrangements with independent parties, and the amounts found outstanding and payable had already been paid to the respondent. However, the appellant refused the bank guarantees, which are the subject matter of the suits, in which the amounts were found to be not payable or considered concocted. Nonetheless, the trial Court neither examined the record and proceedings of the matter placed before it nor made the customers/principal debtors necessary parties to examine their stance. Therefore, the impugned Judgment & Decree ought not to be sustained and are liable to be set aside. In concluding her submissions, learned counsel placed reliance on **PLD 1975 Karachi 672, 2003 CLD 1142, 2004 CLD 587, 2003 CLD 931, AIR 1983 Karnataka 73, and 2022 CLD 1478.**

6. Conversely, it was contended by the learned counsel for the respondent that the appeals are hopelessly time-barred, thereby rendering them inadmissible for consideration by this court. He has submitted that the Banking Court, established under the FIO Ordinance, 2001, and acting as a fact-finding body, rendered the impugned Judgment & Decree after duly examining the pros and cons of the matter. The learned counsel has further submitted that the predecessor-in-interest of the appellant, through a letter dated 19.11.1995, explicitly admitted its liabilities under the bank guarantees, and this letter was exhibited at the time of evidence, with its contents being admitted by the appellant's witness as well. Furthermore, he has argued that the appellant, through the aforementioned letter, acknowledged having paid the amount for six out of the nine bank guarantees and asserted that it was incumbent upon the appellant, as a Guarantor, to honour the remaining bank guarantees. He has further contended that both the appellant and its witness, during evidence, admitted the contents of the letters dated 31.07.1995, 01.10.1995, and 19.11.1995, wherein they not only acknowledged the respondent's claim but also undertook to repay the liabilities of the principal debtors/customers. He has submitted that the impugned Judgment & Decree are sustainable in law; therefore, the appeals preferred by the appellant ought to be dismissed.

7. We have heard the learned counsel for the parties and have benefited from perusing the record. At the outset, it is highlighted that the issue of limitation in preferring the Appeals against the Impugned Judgment & Decree has already been addressed by another learned Divisional Bench of this Court vide its Order dated 15.01.2024. Therefore, it is appropriate to proffer no observations in this regard. However, it is deemed expedient to reproduce the relevant portion of the Order dated 15.01.2024, wherein the issue of limitation was addressed and decided, as delineated hereunder: -

> *"On the last date of hearing Mr. Abbasi raised a preliminary objection of these appeals being barred by time.*
>
> *The brief facts are that initially a judgment and decree dated 29.07.2021 and 04.11.2021 respectively was passed which Judgment and decree were subjected to an application under Section 27 of the Financial Institutions (Recovery of Finances), Ordinance 2001 read with Section 151 and 152 C.P.C., filed by the Plaintiff/Decree Holder, being respondent here. The Judgment and decree were rectified/modified and a fresh decree in pursuance of a rectified judgment was passed on 11.12.2021. It is this Judgment and decree which have been impugned in these appeals, and not the earlier.*
>
> ***The earlier Judgment and decree which were passed and modified, there was no purpose in filing of the appeal. The time for filing appeals in respect of the Judgment and decree, required to be executed, commence on the date when the Judgment and decree modified and amount was enhanced. Hence we consider these***

appeals against the Judgment and decree dated 11.12.2021 to be within time.

[Emphasis supplied]

8. The appellant-bank contended that the principal debtors/customers were not arrayed as parties to the suit. The record unequivocally indicates that Mehran Bank Ltd. executed guarantees for various principal debtors. Subsequently, under the merger scheme ratified by the Government of Pakistan, Mehran Bank Ltd. amalgamated into the appellant-bank, encompassing all its assets and liabilities. Pertinent to this contention, the relevant clause of Guarantees No. 255 and 256, executed between the Respondent-Company and Mehran Bank Ltd., is reproduced verbatim hereunder:

> *"A letter signed by you that the Company has not paid the Morabaha Price to you shall be conclusive evidence in that behalf and we shall there upon be bound to fulfill our obligation under this Guarantee without any reference to the Company."*

9. The above clause stipulates that if the creditor (referred to as "you") issues a signed letter stating that the Company has not paid the Morabaha Price, this letter serves as conclusive evidence of non-payment. Upon receiving such a letter, the guarantor is obligated to fulfil their responsibility under the Guarantee immediately, without needing to consult or reference the Company. This ensures prompt response based on the creditor's certification of non-payment. Section 128 of the Contract Act, 1872 provides that the liability of the surety is co-extensive with that of the principal debtor unless otherwise specified in the contract. In essence, the guarantor's responsibility is equal to that of the principal debtor. This means that if the principal debtor defaults or fails to repay their debt, the guarantor is equally liable to fulfil the obligations[1].

10. For instance, if one takes a loan from a bank and a friend agrees to be the guarantor, the bank can demand repayment from the guarantor in case of default. The guarantor's liability covers the entire debt of the principal debtor, ensuring minimal risk for the lender. In the present case, the appellant-bank did not deny its liability or status as a guarantor. The obligation of the Principal Debtor and the surety is joint and simultaneous unless otherwise agreed in the contract. The Respondent-company has the prerogative to take action against the Guarantor alone or include any of the Principal Debtors. Therefore, the contention of the learned counsel for the appellant-bank that Principal Debtors were not arrayed as parties in the suits holds no merit. Additionally, the record does not reflect that the appellant-bank made any efforts to join the Principal Debtors as parties in the suit during the trial.

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[1] *Hyesons Sugar Mills (Pvt.) Ltd. v. Consolidated Sugar Mills Ltd. (2003 CLD 996).*

11. The learned counsel for the appellant-bank posited that the letters in which the appellant-bank conceded their liability are spurious. Contrarily, during the trial, their witness acknowledged the veracity of the letter dated 31.07.1995 (Ex.P/5/19). Additionally, this witness conceded that, through a letter dated 19.11.1995, the appellant-bank proffered the repayment of the principal amount of nine Guarantees in five instalments commencing from 31.03.1996. Furthermore, he admitted that the appellant-bank failed to adhere to this commitment despite its avowed commitment to disburse payments for the nine Guarantees in five equal installments. He voluntarily testified that the appellant-bank reimbursed the amount of six Bank Guarantees to the Respondent-Company. Moreover, he affirmed the contents of the letters dated 05.05.1996 and 16.05.1996.

12. The appellant-bank initially executed nine Guarantees. Of these, the appellant-bank honored six Guarantees by remitting the respective amounts to the Respondent-Company. Consequently, the appellant-bank's refusal to honor the three remaining Guarantees implicated in the suits is indefensible under the law, particularly in the absence of any cogent reason or evidence. In acknowledging the authenticity of certain letters, the appellant-bank own witness significantly undermines the bank's assertion that these letters are fictitious. By admitting the contents and validity of these letters, the witness provides evidence that directly contradicts the bank's position. This inconsistency between the bank's stance and the evidence presented erodes the credibility of the bank's claim and suggests that the letters are genuine. In light of these admissions and the appellant-bank's actions, the refusal to honour the remaining three Guarantees is unjustified and fails to meet the requisite standard of proof to negate liability.

13. The appellant-bank's acknowledgement and partial compliance with its contractual obligations impose an unequivocal duty to comply fully, barring substantive evidence to the contrary. This legal principle is entrenched in contract law, which mandates that partial performance and acceptance of contractual duties necessitate full performance. The case at hand unequivocally demonstrates the appellant-bank's failure to discharge its contractual obligations fully. The Respondent-Company's right to seek enforcement of the remaining Guarantees through legal proceedings was thus duly justified. Considering the admissions and documented evidence, the appellant-bank's position is legally untenable. Therefore, the trial court would be warranted in ruling against the appellant-bank for its failure to honor its commitments under the disputed Guarantees.

14. After an exhaustive exegesis of the material evidence, the trial court meticulously recorded its issue-wise findings and, upon such deliberation, determined that the Respondent-Company had incontrovertibly substantiated its

case, thus proceeding to decree the suits. Upon scrupulous scrutiny of the evidence, it is manifest that the conclusions articulated and documented in the impugned Judgment are impervious to any allegations of misreading or non-reading of evidence. Furthermore, no legal infirmity or jurisdictional defect could be ascertained therein, thereby rendering the Judgment beyond reproach.

15. For the foregoing reasons, the present appeals merit no consideration and are accordingly **dismissed**.

JUDGE

JUDGE