ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.563/1997

Date	Order with signature of Judge

Date of hearing: 27.11.2007

M/s.Trading Corporation Of Pakistan (Pvt) Ltd., through Syed Mamnoon Hussain Advocate. **Plaintiff.**

M/S.S.R. International through M/s. Agha Zafar Advocate. **Defendant** **Faquir Muhammad and Agha**

JUDGEMENT

KHALID ALI Z. QAZI.J.- **Plaintiff has filed this suit against the defendant for accounts and recovery of Rs.49,815,425/- with markup at the rate of 14% per year from the date of suit till recovery plus cost of the bardana found short at the time of final account.**

2. The brief facts of the plaintiff's case are that initially the plaintiff in the suit was Rice Export Corporation of Pakistan which was merged with Trading Corporation of Pakistan (Private) Limited whose name was substituted vide order dated 29.10.2001 by filing amended title of the plaintiff. On 15.12.1997 the suit was filed against defendant, a Sole Proprietary Concern of Mr.Raisuddin Khan. Subsequently the plaint was amended by consent of the parties pursuant to the Court's order dated 18.8.2003 whereby claim of Rs.1457/- was added being the value of 93 Heavey Cess Bags found short, making the total plaintiff's claim in the suit to Rs.49,815,425/- and the amended plaint was accordingly filed on 30.8.2003. It is further stated that plaintiff entered into a written contract with the defendant on 24.11.1991 bearing No.RECP-5/MXM/91-92 and on behalf of the Government of Pakistan appointed the defendants, after completing the codal formalities, as contractor / Handling Agents for handling the rice crop 1991-1992 at TPX Rice Godown of the Corporation as well as for the handling of any other rice stock which the plaintiff may entrust the defendant during the currency of the said contract. It is the further case of the plaintiff that as per terms of the contract, the defendant have to exercise all care in respect of stocks including its by products etc. entrusted to them and are liable for and make good any loss or damage therein howsoever caused or arising. It is further stated by the plaintiff that in pursuance of the said contract the defendant was entrusted with large quantities of rice of various qualities, gunny bags and dunnage in connection with the performance of the contract from handling rice as per terms of the aforesaid contract. It was alleged that the services rendered and work performed by the defendant was found unsatisfactory which fact is evident from the letters addressed by the plaintiff to defendant from time to time. The plaintiff through his letter dated 04.8.1994 requested for the transfer of bags in the custody of defendant after physically verification. The plaintiff appointed an independent surveyor namely Ibrahim Shaikh & Co, Chartered Accountant, in whose presence plaintiff and defendant carried out physical verification of stocks and submitted report. That vide letter dated 31.10.1996, the plaintiff called upon the defendant to deposit Rs.53,975,540/- being the cost of shortage 8468.3493 M/Tons of rice. It further contended that defendant as handling agents under terms and conditions of contract are liable to render account for the stocks entrusted to them under the terms and conditions of the contract in question and are liable to pay to the plaintiff a sum of Rs.53,965,540/- being the value of shortage and cost of the rice, which was entrusted to the defendant and remained un-accounted for. The plaintiff had a security deposit of the defendant in contract. After the adjustment of the security / retention money of the contract in question, the defendant was liable to pay a sum of Rs.49,813,968/- to the plaintiff for shortage of 8468.3493 metric tons rice. It was further the case of the plaintiff that the defendant failed to render the account of 93 Heavy Cess Bags. The defendant as handling agents under the terms and conditions of contract was liable to render account for these bags entrusted to him and is liable to pay Rs.1,457/- being the value of bags.

3. In the written statement filed by the defendant it was admitted that the contract between the parties was executed on 24.11.1991 for the handling the rice crop as Contractor / Handling Agents for the year 1991-1992 at TPX Rice Godown of the Plaintiff as well as for handling of any other rice stock which plaintiff may entrust the defendant during the contract period. It was denied that defendant's performance was unsatisfactory. True facts were that services of defendant being satisfactory, the period of contract was extended from time to time and the lastly the contract was received on 19.10.1995. It was denied that through letter dated 4.8.1994 plaintiff requested transfer of bags in the custody of defendant after physically verification on the contrary true facts were that the defendant vide letter dated 4.8.1994 requested the plaintiff to transfer the bags to Area Officer TPX, 1993-1994 crops under S.H.S on receipt of the letter, the plaintiff issued memorandum filed with the plaint. The said bags were transferred and certificate of the bags transferred were issued. It was admitted that independent surveyor was appointed. It was further submitted that the defendant vide letter dated 1.11.1993 requested the plaintiff to have joint survey of balance stock received from up country in 1999-92 which is lying intact in the godown and no processing / exports has taken place in 2 yeas and the reason stated in the letter. The plaintiff vide letter dated 11.11.1993 instructed the defendant to increase the number of the screens to enable / prepare 800-1000 M/tons rice per day to meet the shipment. The letter was rejected by the defendant vide letter dated 13.11.1993 requesting for necessary survey to assess the loss. Again vide letter dated

18.11.1993 the defendant requested for survey. It was alleged that the plaintiff declined to arrange for the survey at that time vide their letter dated 20.11.1993. The joint survey was completed on 5.10.1995 and the certificates wee issued. Regarding the percentage loss in stock of rice, the dispute arises between the parties and matter went up to the level of the cabinet division. The following resolution orders of the various authorities regarding the loss in the stock of the rice has been agreed:-

i. Report of the Ombudsman
ii. High Power Committee
iii. Resolution of the Board
iv. Report of the RECP Committee
v. Report of the Cabinet Division.

It was further pleaded by the defendant that the loss in the rice was due to the various reasons and agreed by various committees that there was no liability of any amount payable by the defendant. The defendant requested for issuance of security deposits by various letters but plaintiff failed to reply. The defendant is not liable to pay the amount of Rs.53,965,540/- as alleged or any amount towards the alleged shortage of stocks entrusted to the defendant. The defendant had given details account and handed over the stock by joint survey and all the losses for the reasons stated in various reports of high power committees and the allowable loss is 3 percent whereas the average loss of the stock from 1988-89 1995 is 17.5 percent on arrived quantity. It was stated that no cause of action accrued against the defendant. As the defendant had handed over the stocks as per joint survey and the loss arrived at was much less than the limit allowed by the high power committee. It was stated that the suit was filed malafidely and without any cause of action therefore, same may be dismissed with special costs.

4. Out of the pleading of the parties following issues were framed by this Court on 09.02.2004.

i. Whether the defendant have failed to render the accounts of rice of 6374.06 M.Ts and 93 Heavy Cess Bags to the plaintiff against the stocks entrusted to them, if yes, its effect.

ii. Whether the alleged losses are within the limit prescribed and approved by the Directors of the Plaintiff, the cabinet Division and international standard?

iii. Whether the shortage of rice is due to prolonged storage, improper fumigation, storage conditions, drayage, of moisture of the rice stored in the godown?

iv. Whether the defendant is liable to pay the suit amount being the value of the shortage and cost of the rice, if any?

v. What should the judgment and decree be?

5. It appears that vide order dated 16.12.2004 this Court appointed Mr.Abdul Ghafoor Qureshi, Advocate as Commissioner to record evidence of the parties.

6. Plaintiff examined one witness Muhammad Atiq Khan, who produced his affidavit-in-evidence as Ex.P/1 alongwith documents as Ex.P/2 to P/11 and in cross-examination produced documents (Ex.P/12 to P/18), thereafter, closed its side.

On the other hand defendant filed affidavit-in-evidence of Mr.Raeesuddin same was exhibited as Ex.D alongwith documents as Ex.D/1 to D/23. after cross-examination the said witness, closed its side.

7. The learned counsel for the parties have submitted written arguments.

8. I have heard the learned counsels for the parties at some lengths, perused the record and written arguments and the relevant case laws. I will deal the issue one by one. My findings are as under:-

<u>ISSUE No.1</u>

Learned counsel for the defendant submitted that the quantity of rice entrusted to the defendant after the handing over to the warehouse / godown is not denied. However, important point for consideration of this Court is that at the time of handing over to godown, the account of the defendant was credited with the balance rice as per balance or reserved stock account maintained with the plaintiff in other words physically handing over of the rice was not done by the plaintiff at the time of handing over / at the time of contract therefore in other words they are not responsible for the loss of the shortage of the stock. It may be observed that contention of the learned counsel has no force because the plaintiff had given him rice on book balance without physical payment, because physical payment of huge rice was not possible at that time by the plaintiff consequently after completion of his work, balance rice should be taken from him as per agreement it may be observed that it was agreed in the terms and conditions by both the parties that subject condition in the contract was that the defendant would take over the rice crop on the basis of book balance, therefore, at this stage he is not entitled for raising the objection about physical handing over the stocks the other condition of the contract was that final account will be rendered by the defendant since there was a clog of the contract that he would render accounts on the basis of physical payment. He had to abide by it, whether it was right or wrong. It may be

further observed that according to the terms and conditions of the contract the defendant was under obligation to comply with the provisions of contract as mentioned in Ex.P-2 Annexure III specially Article-13 which reads under:-

13. A C C O U N T S

(i) The contractors shall maintain separately a complete and faithful record of each variety of rice, its bye-products, refractions, stores and gunny bags (new, serviceable and unserviceable) received, stored and delivered by them. The record shall include all transactions arising out of or relating to the execution of the contract.

(ii) The contractor shall render to the Corporation separately a Monthly Account of each variety of rice, its bye-products and refractions (arising out of milling process or manual preparation) stores and gunny bags (new, serviceable and unserviceable) received, stored and delivered by them including sweeping, empty gunnies (new, serviceable and un-serviceable) tarpaulins, dunnage, etc. utilized.

(iii) The contractors shall also maintain separately a complete and faithfull record of rice received, shifted, transported and cleaned by the Mills including its bye-products, and refractions and shall submit monthly Milling Account on the forms prescribed by the Corporation to Manager / DM (Mills) and a copy thereof Accounts Divison, R.S. Accounts Section b y the 15th of the following month alongwith the necessary documents Manager / DM (Mills) shall verify and forward the Milling Accounts to Accounts Division, R.S. Account Section promptly.

(iv) The Monthly Accounts shall be prepared on forms prescribed by the Corporation under the Stock Account Rules (copies of which will be made available to the Contractor by the Corportation) and submitted to the Account Division through the Area Officer concerned by 15th of the following month alongwityh necessary documents including Check Weighment Certificate etc. A copy of the Account shall simultaneously be submitted to the Accounts Divison (R.S. Accounts Sectiuon) of the Corporation. The Area Officer shall verify and forward the R.S. Accounts promptly to the Accounts Division R.S. Accounts Section.

(v) In addition to the Monthly Accounts, the contractors shall furnish to the Corporation (R.S. Account Section of the Accounts Division) half yearly accounts of stocks and stores referred to in sub-clause-(i), (ii), (iii) above of this clause by 30th April and 31st of October respectively in each year showing particulars of all transactions upto and balance on 31st March and 30th September for all such stocks an d stores received from the up-country or by transfer from other agents, area, crops and mills. The accounts will alos show issue of rice for export, local sale transfer to other agents, area, crops and mill, balance in godowns and at mills separately in the Performa prescribed by the Corporation.

(vi) The Contractors shall keep a complete record/account of expenditure incurred by them in the execution of the Contract and shall produce such record before or furnish information therefrom to the Corporation as and when required.

(vii) The Contractors shall maintain separately a running account of bags of every type, quality and size (New, Serviceable and unserviceable) early exhibiting the availability of empty as well as bags filled with rice showing quantity received, dispatched or delivered by them for empty bags separately. All for transfers from new to serviceable, one handling agent to another within or outside the area shall be supported by CWCs.

(viii) The Contractors shall also maintain and submit to the Corporation separately a running account of quantities / weight of damaged rice / bags and exhibit the same at each godown, plinth or shed where the damaged rice, bags is stored.

(ix) The Contractors shall furnish such daily or weekly returns as may be required by the Corporation from time to time in addition to the monthly or half yearly returns prescribed under the 'STOCK ACCOUNT RULES'.

(x) All accounts maintained by the contractors under the terms and conditions of the Contract shall be made available, as and when required for check and audit by a representative of the Corporation and / or by the Audit Officer of the Government of Pakistan. For this purpose the Contractors shall provide all facilities and assistance to the representative of the Corporation and / or the Audit Officer of the Government of Pakistan. The contractors shall keep all records intact in case local audit is not conducted during the currency of the contract. The contractors shall preserve the records for a minimum period of four years from the date of expiry of the contract.

(xi) The contractors shall immediately but not later than 90 days after the completion of the contract (i.e on the disposal of entire or almost entire stocks of rice and stores in accordance with the provisions of the contract,) furnish complete and final accounts of stocks and stores to the Corporation and surrender the balance, if any, without any delay. Failure to do so will entitle the Corporation to transfer the stocks and stores in the custody of the contractors to some other agent or contractor and to appoint a stock verifier for the purpose of verification of the ending stocks and stores. In such an event, the Contractors shall be liable for all cost and consequences including shortages, if any, found by the stocks verifier, and the Corporation will have the right to withhold all payments which may be due to the contractors (including the payment Security Deposit and Retention Money) until and Accounts are furnished and settled by the contractors.

(xii) If the Contractors fails to render accounts within ninety days from the expiry of the contract, their Security Deposit shall be forfeited and if any further dues are

outstanding against them, action would be taken to recover such dues from Retention Money or through Court of Law or through an Arbitrator so appointed by the RECP.

(xiii) <u>The contractors shall ensure proper up-keep and use of the Corporation stores and be responsible for any loss / damage which might accrue to such stores due to carelessness or negligence on the part of the Contractors, their employees, agents, servants or the labour engaged by them.</u> (underlining to give emphasis)

(xiv) The contractors shall maintain:-

(i) Godown-wise stock Register indicating variety-wise stock position in each godowns.

(ii) Stack cards to be provided on each and every stack of rice Lot/gunjy of rice and bags indicating its quantity / weight.

(iii) Consolidates stock Register.

(iv) Arrival Register showing full details of stocks received i.e date of receipt, wagon number, R.R number weight, station of dispatch and godown number where stored etc.

(v) Disposal Register showing full details of stocks;

(vi) Register of Bye-product and Refractions of each variety of rice;

(vii) Register showing the name, address, relevant details etc., of permanent employees of the Contractors employed in connection with the execution of the contract.

(xv) The contractors shall maintain accounts in accordance with any new system of accounting that may be introduced by the Corporation during the currency of the contract.

(xvi) The contractors shall furnish a statement to the Corporation (R.S. Account Section of the Account Division) by 15th of each Month showing details of arrival of wagons/NLC/Private trucks from the up-country, station-wise and wagon/NLC/Private truck-wise in respect of each variety of rice received during the preceding month, quoting CWC No. and date under which the stocks have been accounted for in R.S Accounts.

(xvii) In case the Contractors fail to comply with any of the provisions of Clause-13 for any reason whatsoever, the Corporation shall withhold payment of their running bills until the compliance has been made. This will be without pre-judice to any other punitive of the contract or any law for the time being in force.

The figure of 6374.06 M.Ts appearing in Issue No.1 is a result of clerical / typographical error as the actual and admitted figure is 8468.3493 M/tons. The plaintiff claim has been fully corroborated supported by the oral as well as documentary evidence.

Apparently the shortage of rice and gunny cess bags has been admitted by the defendant in his DW's cross-examination and in written arguments. The defendant's assertion was only that a shortage / losses between 3.5% to 6.5% is permissible which assertion is misconceived and untenable as it is not provided in the Contract exhibited as Ex.P/2 or in its annxure I to V thereto between the parties. It further appears that in any event the percentage of the said shortage / losses of 84.68.3493 M.T rice against the admitted quantity of 74,577.6260 M.Ts received handled by the defendant against the contract in question comes to 11.35%.

On examining the cross-examination of the defendant's witness, it appears that defendant's witness in his cross has admitted which reads as under:-

"It is correct that the suit contract relate to the period of 91-92 Crop I have stated Crop of 74,577 M.T for year 1991-92 was dealt with by the defendant. It is correct that physical survey was conducted in my presence (Ex.P/9). I see page 7 of the Survey Report Ex.P/9 and say that the shortage shown on these page is not only for crop year 91-92. It is correct that the Contract for 1989-90 upto 1991-92 were all separate Contracts. It is correct that according to the Contract it is the responsibility of the defendant to protect the good. It is correct that the defendant had to maintain all the record of the goods."

Defendant's witness has also admitted in the cross-examination as under:

"It is correct that according to the contract in case the final account are not submitted that security deposit will be forfeited.. It is correct that there was shortage of 93 gunny bags."

On bare perusal it is crystal clear and proved that the defendant has failed to render the account of the admitted shortage of rice and gunny bags in question to the plaintiff, as such, the answer to the above issue is to be in affirmative.

<u>ISSUE NO.2.</u>

As regard the issue No.2 from the record it appears that there is no provision in the contract (Ex.P/2) or in its annexures I to V thereto between the parties, which permit / allow any percentage of shortage / loss as alleged or otherwise. As stated by the learned counsel for the plaintiff the approval of the Board of Directors of plaintiff was subject to approval of Government of Pakistan, Ministry of Commerce, which was not accorded. As pointed out by the

learned counsel for the plaintiff that in view of the admissions as highlighted in issue No.1 the percentage of the admitted shortage of 8468.3493 M.T rice as compared to admitted total quantity of 74,577.6260 M.Ts Rice received and handled by the Defendant for the crop 1991-92 under the Contract in question comes to 11.35% which in any case is not permissible / allowable. Specific question was put on plaintiff's witness in respect of percentage of shortage relating to the subject case in cross-examination which reads as under:-

> ***"It is not correct to suggest that the total shortage against Crop 1991-92 was only 1.73%. he voluntarily stated that the shortage in respect of suit contract was 11.35%".***

It appears that no further question was put in the cross-examination. The percentage of shortage of rice as stated above is evidently 11.35%, which in no way falls within the limit prescribed as alleged or otherwise. It may be observed that the contents of various reports referred by the learned counsel for the defendants are neither binding nor can condone the agreed terms and conditions in contract regarding loss in the stock of the rice. The answer to this issue, as such is to be negative.

ISSUE No.3

Mr.Mamnoon Hassan learned counsel for the Plaintiff has advanced his arguments and stated that admittedly it was the responsibility of defendant to protect and take care of the stocks of rice of 74,577.6260 metric tons entrusted to him by the plaintiff under the contract in question in accordance with clauses 7(a) and (c) of Annexure III to the contract (Ex.P/2) which according to Mr.Mamnoon Hassan, defendant has been filed, neglected as such, the defendant is liable for shortage in question and in terms of clause 13(xiii) of the annexure III to the Contract (Ex.P/2) and therefore the defendant was responsible for the loss/damage caused to the plaintiff. He has further submitted that onus to prove that proper steps had been taken by the defendant as bailee for discharge of his duty imposed upon him under Section 151 of Contract, 1872, would initially lie on him and not on the plaintiff but the defendant has failed to discharge his onus as cast upon him as bailee under Section 151 read with Section 152 of the Contract Act, 1872, as such, per Section 176 ibid, the defendant is responsible to the plaintiff for the admitted shortage of 8468.3493 metric tons of rice and 93 heavy cess bags in question.

Mr.Agha Faquir Muhammad learned counsel for the defendant controverted the arguments of Mr.Mamnoon Hassan, he submitted that claim of the plaintiff is that the quantity of rice entrusted to the plaintiff was short as per the physical verification carried out by one M/s.Ibrahim Shaikh & Co. (Ex.P/9) and the quantity of bags as per version of the plaintiff was short as per verification conducted by the officers of the plaintiff during the pendency of the suit. He contended that whatever quantity of rice was entrusted to them was delivered back to the plaintiff and as such there is / was no shortages if there is any loss in weight, same is due to inherent vice of the rice, which has a tendency to loose weight. It was their case that 3.5% to 6% loss in weight per annum is a common feature of rice and the same was even approved by the Board of Director, of the plaintiff in their board resolution at page 251 of the evidence file as well as internationally recognized quality assurance firm SGS Pakistan Private Ltd. (at page 249 of the evidence file). Such loss is attributed to prolong storage as commodities like rice are prone to loss in weight due to polishing, moisture, packing etc. He has further submitted that similarly (Ex.P/15) a report prepared by Management Services Division, Cabinet Secretariat, Government of Pakistan regarding "Assessment of Losses' in weight of rice procured for export by plaintiff also states that 3% loss in weight of rice in handling etc is normal.

It is pertinent to note that the PW-1 also admitted in his cross-examination that prolong shortage can result in loss in weight:-

> ***Cross-examination of the PW-1.***
>
> ***"It is correct that insects reduce the weight of the rice voluntarily states it is very nominal.***
>
> ***Q. Is it correct that the sun moisture, bad condition of the godowns rats are the causes of the reducing the quantity of rice?***
>
> ***A. It is correct that the weight is reduced only by moisture, rat and birds of very nominal quantity.***

It may be observed that the shortage of rice in question is not only due to prolonged storage, improper, improper fumigation, storage conditions, drayage, moisture, of the rice stored in the godown but due to the negligence and carelessness of the defendant as well. It may be observed that the defendant as bailee under the law was bound to take proper care of the stocks of the rice in question as a man of ordinary prudence, would under similar circumstances, take care of his own goods. It was duty of the defendant to take all reasonable precautions to obviate risks which may be reasonably apprehended or foreseeable, his duty would be to take proper measure for the protection of goods when such risks were imminent or had actually accrued. Reliance is placed on the case of M/s.MASTGAR SONS..VS..M/S.EBRAHIM ENTERPRISES and other reported in CLC 1381 and Q.B.E INSURANCE LTD. ..VS.. THE TRUSTEES OF PORT OF KARACHI reported in 1992 CLC 904.

Keeping in view the peculiar facts and circumstances of the case in my humble opinion the defendant is entitled 3% rebate on handling losses of rice crop 1991-92 only. It may be observed that the quantity of previous contracts for the crops 1988-89, 1989-90 are not subject matter of the suit in question therefore 3% rebate on handling losses be allowed for crop 1991-92.

Admission of Defendant's witness in his cross-examination read as under:-

> ***"It is correct that according to the contract it is the responsibility of the defendant to protect the good."***

On bare reading it appears that it was an admitted responsibility of the defendant to protect and take care of the stocks of rice of 74,577.6260 M.T entrusted to him by the plaintiff under the Contract in question, which according to the learned counsel for the plaintiff defendant has been failed, neglected, as such is liable for shortage in question and in terms of clause 13 (xiii) of the annexure III to the Contract (Ex.P/2) was / is responsible for the loss / damage cause to the plaintiff, which again reads as under:-

Supra ***"13(xiii). The contractors shall ensure proper up keep and use of the corporation stores and be responsible for any loss/damage which might accrue to such stores due to carelessness or negligence on the part of the contractors, their employees, agents, servants or the labour engaged by them.***

On bare reading the onus to prove that proper steps had been taken by the defendant as bailee for discharge of his duty imposed upon him under Section 151 of Contract Act, 1872 would initially lie on him and not on the plaintiff. Section 151 of the Contract Act, 1872, reads as under:-

> ***"Section 151 care to be taken by bailee. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary PRUDENCE would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed."***

Defendant's witness in his deposition has been deposed that proper steps had been taken by the defendant in discharge of his duty imposed upon him as bailee under the law. The defendant as bailee was bound to take as much care of the stocks of rice in question as a man of ordinary prudence would, under similar circumstance, take of his own goods. It was duty of the defendant to take all reasonable precautions to obviate risks, which may be reasonably apprehended or foreseeable, his duty would be to take proper measures for the protection of goods when such risks were imminent or had actually occurred.

It appears that defendant has failed to discharge his onus as cast upon him as bailee under Section 151 read with Section 152 CPC of the Contract Act, 1872, as such, per Section 176 ibid is responsible to the plaintiff for the admitted shortage of 8468.3493 M/Tons of rice and 93 Heavy Cess Bags in question and defendant cannot legally avoid his liability thereto on any excuse. This issue would therefore, be against the defendant.

ISSUE No.4 & 5.

-

These issues are interconnected and are to be taken together. It appears that on the basis of terms and conditions of the contract and admitted position of shortage 8463.3493 M/Ts of Rice and 93 Heavy Cess Bags gunny bags as pointed out in issues No.1 to 3 and the fact that the shortage in question and their valuation were specifically mentioned in the plaint. It appears that affidavit-in-evidence of Plaintiff witness and the reports as exhibited as Ex.P/9 and P/11 and no question in cross-examination to contradict was put by the defendant to Plaintiff's witness.

On bare perusal it appears that the claim of the plaintiff stand proved and will not require any further proof in terms of Article 113 of Qanoon-e-Shahdat 1984. Learned counsel for the plaintiff has placed reliance on the cases reported as MST. FAROOQ BIBI VS.. ABDUL KHALIQ AND OTHERS REPORTED IN 1999 CLC 1358 (A) RELEVNT PAGE [1361]A (Supreme Court (AJ & K) it was held that *"It is a settled principle of law that a piece of evidence or statement of witness which goes against the interest of particular party and that party does not question the correctness of that assertion or the deposition of the witness it shall be deemed to have been admitted."*

In the case of *CENTRAL BANK OF INDIA ..VS.. SYED MUHAMMAD ABDUL JALIL SHAH and others reported in 1999 CLC 671 (f) [rel.691]F.* It was held wherein that *a fact is asserted in Examination-in-Chief and is not impeached by way of cross-examination, that assertion is deemed to have been admitted by defaulting party"*

In the case of MUHAMMAD AKHTAR ..VS.. MST. MANNA & 3 OTHERS reported in 2001 SCMR 1700 (C) wherein it has been held by Hon'ble Supreme Court of Pakistan that *where a fact asserted by one party remains unchallenged, the same amount to admission on the part of the other party.*

For the foregoing facts, evidence, reasons and discussion, I therefore, decree the suit of the plaintiff against the defendant in the sum of Rs.4,81,96,159/- with mark up at the rate of 14% per year from 15.12.1997, the date of filing of suit till recovery of decretal amount.

JUDGE

Karachi
Dated: