

**JUDGMENT SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**

Date	Judgment with signature of the Judge
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Present:

**Mr. Justice Muhammad Iqbal Kalhoro.**  
**Mr. Justice Muhammad Osman Ali Hadi .**

Ist Appeal No.11 of 2021

Aurangzeb Hashmi & another ..... Appellants

Vs.

Askari Bank Ltd. & others ..... Respondents.

**06.02.2025.**

Mr. Saalim Salam, advocate for Appellants.  
Ms. Lubna Aman, advocate for respondent No.1.

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

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**MUHAMMAD IQBAL KALHORO J:** Respondent No.1 Askari bank Ltd (bank) filed a suit No.68/2015(old Suit No.51/2012) against appellants for recovery of an amount of Rs.11,023,001.87 stating that appellant No.1 availed a financial facility of Rs.9 Million in the year 2007 and to secure the same executed several documents: Agreement for Financing , Promissory Note, General Finance and Collateral Agreement, Letter of Continuity and Letter of Hypothecation of moveable's and receivables dated 18.08.2007. Besides, defendant No.2 to 6 executed personal guarantee to discharge all the liabilities due and payable by appellant No.1. Further, as a security, appellant No.1 executed memorandum of deposit of title deeds in favour of bank in respect of various properties (a details of which is mentioned in the impugned order).

2. Defendant No.6, who is respondent No.4 here, also executed memorandum of deposit of title deeds in favour of bank in respect of immovable property bearing S.No.232, plot No.3 admeasuring 3630 Sq. Yds, S.No.253,254,248,229, 348 situated at Rafi Garden Deh Dig Tapo Malir, Karachi. Later on at the request of appellant No.1, the bank renewed the financial facility for a term and period from 01.08.2008 to 29.10.2008 against execution of Agreement for Financing , Promissory Note, General Finance and Collateral Agreement, Letter of Continuity and Letter of Hypothecation in respect of current account assets and Letter of Continuity. Other defendants also executed personal guarantees in this regard. Again the bank was approached by defendant/ appellant No.1 on 16.01.2009 with a request to further renew finance facility for one year which was obliged vide Sanction Advice dated 20.01.2009

and to secure the same, necessary documents were executed by the defendants/appellants.

3. After being served through substitute service in daily Jang and Dawn dated 02.02.2012, the defendants in the suit appeared and filed application for leave to defend the suit to which the bank /plaintiff filed replication.

4. Thereafter, learned Banking Court heard the parties and vide order dated 23.12.2020 dismissed the application for leave to defend and as a consequence decreed the suit against defendants jointly and severally in the sum of Rs.8,999,562/- alongwith costs of the suit and costs of funds from the date of default till realization of entire decretal amount. The prayer of the bank for attachment and sale of mortgaged properties to realize decretal amount has also been allowed by the impugned order.

5. Learned counsel for appellants has argued that learned banking court has failed to consider contents of his application in which ground of excess payment has been made and agitated through documentary evidence; learned banking court has failed to advert to entries stated in so called statement of account filed by the bank; learned banking court has failed to appreciate the fact that appellant borrower has paid entire amount alongwith mark-up for aggregate period; no default has been committed; learned Presiding Officer of the Banking court has failed to consider the receipts of payments of amounts to the bank by the appellants; learned Presiding Officer of the Banking Court has failed to appreciate that in replication filed by the bank, contents of application for leave to defend have not been rebutted; the Presiding Officer, Banking Court has failed to consider the questions of law raised by appellants in leave to defend application and the details of amounts availed, mark-up and principle amount paid in terms of subsection (4) of section 10 of Financial Institutions (Recovery of Finances) Ordinance, 2001 (Ordinance, 2001). He has relied upon 1984 SCMR 634, PLD 1995 SC 362, 1996 SCMR 237, NLR 2001 Civil 536, PLD 1994 Pesh 121, 2005 CLD 444, PLD 1998 Kar 316 and PLD 1998 Kar 302 to support his arguments.

6. On the other hand, learned counsel for respondent No.1 has supported the impugned order and submits that claim of the bank raised in the suit is based on verified documents of the bank, whereas appellant No.1 has filed only a Photostat copy of deposit/withdrawal statement in his application for leave to defend which is not a conclusive proof of the fact that he has made payment of entire outstanding amount.

7. We have heard the parties and perused material available on record and sought guidance from the case law relied at bar. Section 10 of Ordinance, 2001

lays down very clearly that defendant shall not be entitled to defend the suit unless he obtains such leave from the Banking court. And in default of his doing so, the allegations of facts in the plaint shall be deemed to be admitted and the Banking Court may pass a decree in favour of the plaintiff. Further explaining, the same provision of law has stipulated that leave to defend application shall be in the form of written statement and shall contain a summary of substantial questions of law as well as facts in respect of which evidence needs to be recorded. It is further provided that in case suit for recovery has been filed by financial institution, the application for leave to defend shall contain amount of finances availed by the defendant from the financial institution, the dates of payments; the amount of finance and other amounts relating to the finance payable by the defendant to the financial institution upto the date of institution of the suit; the amount if any which the defendant disputes as payable to the financial institution and the facts in respect thereof.

8. It is further provided in subsection (5) of the said provision that where application for leave to defend is found materially incorrect at any stage of the proceedings, the defendant shall lose the right to defend and shall also be liable to pay penalty of not less than 5% of the amount of the claim, unless the defendant can establish that incorrect information was submitted as a result of bonafide mistake. Subsection (6) states that application for leave to defend shall be accompanied by all the documents which in the opinion of the defendant support substantial questions of law or facts raised by him. It is also stipulated that any application which is devoid of said fundamentals shall be rejected unless the defendant discloses sufficient cause for his inability to comply with any such requirement.

9. While keeping in mind aforesaid provisions of law, we have perused application for leave to defend in which appellant No.1 has claimed that he had availed an amount of Rs.58,684,364/-, whereas the amount payable on expiry of the agreement was Rs.9,000,000/-. The amount paid by the appellant inclusive mark-up is Rs.58,933,940/- and the amount paid in excess till filing of the suit is Rs.249,576/-. Apparently, this statement of facts is not supported by any verifiable or attested document, nor respective details i.e. when the said amount was paid by the appellant to the bank has been mentioned in the application for leave to defend, as required by subsection (4) of section 10 of Ordinance, 2001. Appellant No.1 has claimed that he had paid entire amount, and so was the contention of learned counsel for appellant in his argument, but except some unverified Photostat copies of deposit and withdrawal bank statements and some Photostat copies of receipts pertaining mostly to the year 2007 showing

deposit of different amounts, nothing substantial has been filed to establish that appellant has paid entire amount outstanding against him as claimed and has not committed any default later on as alleged by the Bank.

10. As against it, the bank has filed all the relevant documents, as discussed by learned Banking court in its order, which although are electrically generated through computer but are still attested by the authorized officer. Learned Banking Court in para 8 of its order has categorically observed that defendant has not put forth any document to put in juxtaposition to the statements of account submitted by the plaintiff bank as required u/s 10(4) of Ordinance, 2001. It has further observed that mere submission of a typed deposit and withdrawal statement (Annexure C) and that too without any substantiating document, is not found sufficient to attract consideration in the subject case.

11. It is a settled proposition of law that where defendant in an application for leave to defend does not mention the amount of finance availed by him, the amounts paid by him, the dates of payments, and provides no proof of such repayments, the penal consequences of rejection of his application would stand attracted. The appellant in his application for leave to defend has vaguely mentioned the figures of the amount availed and repaid by him, without referring to any dates of payments supported by the valid documents showing such payment in the bank.

12. The vague mention of such essential facts and unsubstantiated claim that he has repaid the entire amount does not fulfill stipulation envisaged under subsection (4) of section 10 of Ordinance 2001. That said, the application for leave to defend is found materially incorrect in that the appellant has stated that claim of the bank is based on false and forged documents totally denying the case which is absurd and then no proof in this regard, he has submitted in the court. Further, on the contrary he has claimed in his application for leave to defend that he has paid the entire amount to the bank but without substantiating the said fact through any reliable document. In the entire application for leave to defend, apart from pointing fingers to and challenging authenticity of the documents submitted by the bank terming them as bogus and forged, the defendants /appellants have simply claimed that they have paid the entire amount without offering any tangible evidence in this regard.

13. In the circumstances, subsection (5) of section 10 of Ordinance, 2001 which lays down that when application for leave to defend is found incorrect the defendant shall lose the right to defend, appears to be attracted. In comparison to the documents submitted by the bank establishing availing of financial facility

by the appellants, its renewal from time to time on their own request, the proof of which has been filed in the shape of documents and letters, the defendant could not come up with any substantial material to defend the suit. Hence, we do not find any illegality in the impugned order and consequently dismiss this appeal being devoid of merits.

The appeal is accordingly disposed of alongwith pending applications.

JUDGE

JUDGE

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