

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. B-69 of 2000

Date: Order with signature of Judge

- 1. For orders on CMA No. 4826/2024
- 2. For orders on Chartered Accountant

28.09.2026

Ms. Naheed A. Shahid, Advocate for the Plaintiff.
Mr. Shahid Ali Ansari, Advocate for the Defendants.

ORDER

SAMAN RAFAT IMTIAZ, J.- By this order, I intend to dispose of CMA No. 4845/2000 and CMA No. 7838 of 2001 filed on behalf of Defendants No.1 to 4 [Taasco (Pvt.) Limited, Azhar Said, Asif Said and Syed Habibullah Naqvi], which is an application under Section 10(12) of Financial Institutions (Recovery of Finances) Ordinance, 2001, whereby the said Defendants have sought unconditional leave to defend the suit.

2. Briefly, the case of the Plaintiff is that at the request of the defendants the plaintiff allowed the Defendant No.1 interchangeable export refinance scheme and running finance facilities. The facilities were allowed to the Defendant No. 1 with the condition as imposed by the State Bank of Pakistan that the export proceeds would be repatriated within 150 days of the facility. When the export bills were not paid on their due dates, the amounts were shifted to the Running Finance account of Defendant No. 1 and the refinance was remitted to the State Bank of Pakistan. The claim rests on the finance agreement dated 22.6.1998 (Annexure P/2), promissory note (Annexure P/3), guarantees of Defendants No. 2, 3 & 4 and the statement of account (Annexure P/16), and the agreement provided for automatic renewal if the outstandings were not paid. The Defendants No. 2, 3, and 4 guaranteed the repayment of the Plaintiff's dues by the Defendant No. 1 by way of letter of guarantee dated 22-06-1998 and the Defendant No. 2 also created a lien over his US Dollar account at London. The Plaintiff sued the Defendant No 1 as principal borrower and the Defendants No. 2, 3, and 4 as guarantors. The Plaintiff seeks decree in the amount of Rs. 53,832,563.11 with mark-up at the rate of 16 ½ percent per annum from the date of suit till payment while adjusting Rs. 38,619,748.85, which was realized by the Plaintiff by exercising its lien over the dollar account of the Defendant No 2, which however has been kept in sundry account pursuant to an order dated 23-05-2000 passed in Suit B-46 of 2000.

3. At the outset, both the learned counsels for the Plaintiff as well as the Defendants submitted that the instant matter was tagged with Suit No. B-46 of 2000, which was instituted by the Defendants against the Plaintiff for the same finance facilities. At some point, the file of the connected suit was misplaced and it has been ordered to be reconstructed and as such, an adjournment was sought. However, it is noted that on the last date that despite the fact that Mr. Shahid Ali Ansari, Advocate for the Defendant was present in Court, no such submission was made and it was ordered in his presence that no further adjournment shall be given to either side given that it is a 26-year-old matter and both counsel were specifically directed to come prepared. Recently the Supreme Court has observed in an unreported order dated 03-09-2026 passed in C.A No. 300/2018 and CPLA No. 686/2018 that it is agonizing to observe that litigants and their counsel frequently treat the benevolence of the Court as a mere procedural formality, ignoring the solemnity of categorical directions. Even otherwise, no reason has been given as to why the instant suit cannot proceed on its own merits. The provisions of Section 10, CPC have no application for and in relation to suits filed under the Financial Institutions (Recovery of Finances) Ordinance, 2001 by virtue of Section 9(4) thereof. Therefore, the matter is hereby de-tagged from Suit No. B-46 of 2000.

4. Notwithstanding the foregoing and despite opportunity, the learned counsel for the Defendants failed to submit any arguments in support of the leave application. Therefore, the matter was announced to have been dismissed for non-prosecution. A Division Bench of this Court held in *Dr. Jamil Masood Usmani v. Askari Bank Limited*, 2016 CLD 387 that the Banking Court is fully empowered to dismiss an application for leave to defend for non-prosecution. My own view is as per my judgment rendered while sitting in a Division Bench of the Islamabad High Court in *Ali Waqar Azeem v. Standard Chartered Bank Pakistan Limited*, 2024 CLD 397. However, it is noted that even in *Dr. Jamil Masood Usmani (Supra)* the Court nevertheless considered the application on merits therefore, the leave application filed by the Defendants No. 1 to 4 is being considered.

5. I have perused the record, which shows that on 20.07.2000 an application under Section 10 of Banking Companies Act, 1997 bearing CMA No. 4845/2000 was filed through an advocate by Defendant No. 4 claiming to be the authorized representative of Defendant No. 1 and submitting that he came to know about the suit through publication in the *Daily Dawn* dated 30.06.2000 but that the plaint has not yet been received yet the leave to defend application was being filed out of abundant caution. The application has been signed by an advocate for Defendant and there is a statement

available on the record dated 11.07.2000 purportedly by Advocate for the Defendant stating that Vakalatnama has been filed and copy of plaint is requested for preparation of leave to defend but no Vakalatnama is on the record of any advocate on behalf of the Defendants 1 and 4 till such date. There is another statement/undertaking by the said Advocate for Defendant stating that Defendants No. 2 & 3 are out of Pakistan and the undersigned Advocate undertakes to file Vakalatnama on their behalf while tentatively the leave to defend application under Section 10 may be treated as an application on their behalf which is dated 21.07.2000.

6. By way of affidavit to CMA No. 4845/2000, the Defendant No. 4 stated that defendant No.2 is neither a director nor a shareholder of defendant No.1 and never pledged his US dollar account at London; that each facility was independent, and markup cannot be charged beyond 240 days or on markup; that shifting the export facility to running finance was illegal; that defendant No.1 has filed Suit No.46/2000 (old No.620/2000) for accounts and cancellation of documents; and that complicated questions of law and fact need evidence, so unconditional leave should be granted. No board resolution or power has been filed on behalf of Defendant No. 1 in favour of Defendant No. 4. The record shows that Vakalatnama was filed on behalf of Defendants No. 1 and 4 on 24.10.2000.

7. Thereafter, CMA No. 7838 of 2001 was filed on 18.10.2001 on behalf of Defendant No. 1 to 4 under Section 10 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 claiming that notice of the above suit was received by Defendant No. 1 to 4 on 03.10.2001. By way of this CMA, the Defendants No.1 to 4 seek leave on the grounds that the suit involves substantial questions of law and facts, including conversion of export finance into running finance, charging of markup beyond the agreed period and on markup, filling of blank documents, liability under guarantees and renewal of the facility under BCD Circulars. On facts, they allege that the Plaintiff converted independent facilities without consent, charged markup over markup, failed to credit unpaid export bills and misused blank signed documents. They dispute the guarantees of Defendants No.3 and 4 and the alleged guarantee and lien of Defendant No.2. They also dispute the statement of account and alleged balance, allege manipulation of the renewal document, deny any fresh disbursement and contend that the claim relating to 1991 is time barred. They further rely on their earlier Suit No. B-46/2000 in which this Court appointed Chartered Accountants to examine the disbursements, receipts, export proceeds and charges in the account. Vakalatnama was filed on 27.11.2000 on behalf of Defendants without

name of defendants and another one was filed on 14.12.2000 on behalf of Defendant No. 3.

8. In its replication, the Plaintiff contends that Defendants No.1 to 3 never sought leave to defend under Act XV of 1997, that the undertaking dated 21.07.2000 was signed by counsel without authority and is time barred, and that the present application is not in the prescribed form or accompanied by the required documents. On merits, it denies unauthorized conversion of facilities, charging of markup over markup or beyond the agreed period, and execution of blank documents. It states that the renewal was automatic, the Defendants have identified no incorrect entry in the statement of account and the alleged balance of Rs. 19,778,161.10 does not appear therein. It further states that the unpaid export bills remain in its possession and copies of five bills with demand letters were filed. The Plaintiff accordingly seeks dismissal of the application.

CMA No. 4845 of 2000

9. This application was filed by the Defendant No. 4 through counsel however, there is no Vakalatnama executed by Defendant No. 4 in favour of any attorney on such date or prior thereto. Therefore, Plaintiff has objected by way of replication that such statement cannot be treated as a statement on behalf of Defendant No. 4. Nevertheless, such application is supported with affidavit of Defendant No. 4. In the best-case scenario, the said application can therefore be treated as an application for leave to defend by Defendant No. 4 but cannot be treated as an application on behalf of Defendant No. 1 in the absence of any board resolution authorizing Defendant No. 4 to file leave to defend on its behalf.

10. To the extent that it is treated as an application under Section 10 of the of the Financial Institutions (Recovery of Finances) Ordinance, 2001 on behalf of the Defendant No. 4, it is pertinent to note that grant of the export finance facility has not been denied. Moreover, it has been admitted that sale proceeds could not be remitted due to some business difficulties. However, it has been denied that any pledge was created by Defendant No. 2 on his US dollar account and that Plaintiff has charged mark-up beyond the finance facility. Bare perusal of the application, however, shows that compliance of the mandatory provision of Section 10(4) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 has not been made nor as any sufficient cause been disclosed for the inability to do so and, as such, the application is rejected for this reason alone under Section 10(7) of the of the Financial Institutions (Recovery of Finances) Ordinance, 2001.

CMA No. 7838/2001

11. Coming to CMA No. 7838/2001 filed on 18.10.2001 claiming that notice of the above suit was received by Defendant No. 1 to 4 on 03.10.2001, the same so far as Defendant No. 4 is concerned, is a blatant contradiction from his earlier application in which he had admitted notice on 30.06.2000 albeit without copy of plaint. Even otherwise, there is no evidence on the record that copy of plaint was received on 03.10.2001. Therefore, it appears to be time-barred. Even otherwise, availing of export finance and running finance facilities has not been denied. It has also been admitted that there was a delay in repatriation of the sale proceeds. However, it has been alleged that the Bank could not have converted the same into a running finance facility, and further that the Bank had obtained the Defendant's signatures on blank documents, and lastly that the mark-up has been charged beyond the date without lawful authority. The plea about conversion of export finance facility into running finance facility does not raise any triable questions of fact in view of the admission that the export finance facility was not repaid on time and also that execution of the documents has not been denied. By now, it has become settled law that where it is admitted that documents are signed, the customer is estopped from claiming that they were signed in blank. Mere bald and general assertion that blank documents were executed is not acceptable nor constitutes a triable issue. Similarly, it is settled that any dispute regarding mark-up is not a triable issue for which recording of evidence is required. Thus, no substantial question of law or fact has been raised that requires recording of evidence. Most importantly, this application, too, is not in compliance of Section 10(4) and, as such, merits rejection in accordance with Section 10(7) of the Financial Institutions (Recovery of Finances) Ordinance, 2001.

12. In view of the same, CMA Nos. 4845/2000 and 7838/2001 are dismissed as being devoid of merit; being non-compliant with Section 10(4), and time barred. The Plaintiff-Bank is directed to file breakup of the outstanding amount. To come up on 04.11.2026.

J U D G E

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