

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

First Appeal No.17 of 2001

Appellant : Pakistan Industrial and Commercial
Leasing Limited through Mr. Hammad
Qureshi, Advocate

Respondents : M/s. Muneer Fish Mills and others
Nemo.

Date of Hearing : 13.10.2026

Date of Judgment: 20.10.2026

J U D G M E N T

Amjad Ali Sahito, J.- Through this appeal, the appellant has called in question the judgment and decree dated 25.07.2000 passed by the learned Banking Court No.4 at Karachi in Suit No.106/1999; whereby the suit for recovery of Rs.1,593,642/- alongwith costs and future mark-up was decreed against Respondent No.3 / M/s Areeje Trading Company only for an amount of Rs.6,82,000/-, whereas the claim against Respondents Nos.1 and 2 was dismissed.

2. Briefly stated, the facts giving rise to the present appeal are that the appellant, which is a leasing company, sanctioned a leasing facility in favour of Respondents Nos.1 and 2 for two units of boilers and a cutting machine, along with accessories, under Lease Agreement No.19105305 dated 19.01.1995. The facility was sanctioned for an aggregate amount of Rs.7,00,000/-, repayable in 36 consecutive monthly instalments of Rs.24,500/- commencing from February 1995. Respondent No.3, M/s. Areeje Trading Company, was selected as the supplier of the leased machinery.

3. According to the appellant, the machinery was to be supplied by Respondent No.3 to Respondents Nos.1 and 2, and the appellant paid an amount of Rs.6,82,500/- to Respondent

No.3 through cheque No.847016 dated 23.01.1995. To secure repayment of the facility, Respondent No.2 executed the lease agreement, promissory note, revival letter, personal guarantee and letter of pledge. He also created a mortgage over his immovable property situated at Ali Akbar Shah Goth, Deh and Tappo Ibrahim Haidri, Karachi, measuring approximately 1,400 square yards, and deposited the relevant title documents with the appellant.

4. The appellant further maintained that Respondents Nos.1 and 2 had availed the leasing facility but subsequently failed to pay the agreed monthly rentals. It further claimed that despite repeated demands and a legal notice dated 15.10.1997, the respondents failed to discharge their outstanding liability. The appellant accordingly instituted Suit No.106/1999 before the learned Banking Court, seeking recovery of Rs.1,593,642/-, together with costs and future mark-up, as well as attachment, repossession and sale of the leased machinery and the mortgaged property in accordance with law.

5. Respondents Nos.1 and 2 contested the suit and denied their liability. The principal dispute concerned whether the leased machinery had actually been delivered to them and whether they had availed the facility in question. The learned Banking Court framed issues and recorded the evidence produced by the parties. Upon considering the material available on record, the learned Banking Court concluded that the appellant had failed to establish the delivery of the leased machinery to Respondents Nos.1 and 2. Consequently, the claim against them was dismissed, while Respondent No.3 was held liable to refund of Rs.6,82,000/-, being the amount paid by the appellant for the machinery that was not proved to have been delivered to Respondents Nos.1 and 2. Being aggrieved by the impugned judgment and decree, the appellant has preferred the instant appeal.

6. Learned counsel for the appellant has mainly contended that the learned Banking Court failed to properly appreciate the documentary and oral evidence, particularly the lease

documents, the payment made to Respondent No.3, the survey report and the other material relied upon by the appellant. It was argued that the record clearly demonstrated that the leasing facility had been sanctioned in favour of Respondents Nos.1 and 2 and that the appellant had disbursed the requisite amount to Respondent No.3 for the supply of the leased machinery. Learned counsel further contended that the execution of the lease agreement, promissory note, revival letter, personal guarantee and other security documents sufficiently established the contractual arrangement between the parties and the obligations arising therefrom.

7. It was further argued that the learned Banking Court failed to consider the evidentiary significance of the survey report dated 02.01.1995, which, according to learned counsel, supported the appellant's case regarding the existence and installation of the machinery at the relevant premises. Learned counsel submitted that the documentary evidence, when read collectively and in conjunction with the surrounding circumstances, supported the appellant's claim and could not have been discarded by examining each document in isolation. It was further contended that the learned Banking Court did not properly appreciate the correspondence exchanged between the parties, particularly the letter dated 03.06.1997, which was relied upon by the appellant in support of its claim concerning the outstanding rentals and adjustment of the proceeds of investment certificates.

8. Learned counsel also argued that Respondents Nos.1 and 2 had executed the relevant financing and security documents and that their failure to discharge the financial obligations arising out of the transaction could not be overlooked merely on the ground that the delivery of the leased machinery had not been satisfactorily established. It was urged that the learned Banking Court had failed to draw the appropriate inferences from the evidence available on record and had consequently arrived at findings that were contrary to the material placed before it. According to learned counsel, the impugned judgment suffered from misappreciation of the evidence and an erroneous application of the relevant legal principles, thereby resulting in

the dismissal of the appellant's claim against Respondents Nos.1 and 2. The appellant, therefore, seeks setting aside of the impugned judgment and decree to the extent challenged in the appeal.

9. No one has appeared on behalf of the Respondent. The same position prevailed on the previous dates of hearing. Considering that the matter pertains to the year 2001, we have proceeded to decide the appeal on the basis of the available record and the assistance rendered by learned counsel for the appellant.

10. We have heard learned counsel for the appellant and, with his assistance, examined the available record.

11. The controversy in the instant appeal essentially centres on whether the appellant established, through cogent and reliable evidence, that the leased machinery had been delivered to Respondents Nos.1 and 2, thereby rendering them liable for payment of the outstanding lease rentals, or whether the learned Banking Court rightly declined to pass a decree against them for want of proof of delivery.

12. A perusal of the record reveals that the execution of the leasing documents and payment of the amount to Respondent No.3, by themselves, do not establish that the machinery was actually delivered to Respondents Nos.1 and 2. The burden rested upon the appellant to prove the material facts constituting the foundation of its claim, particularly the delivery of the leased assets to the alleged lessees. The learned Banking Court examined the evidence adduced by the appellant and, upon its appraisal, concluded that no satisfactory evidence had been produced to establish actual delivery of the machinery to Respondents Nos.1 and 2.

13. The survey report relied upon by the appellant does not cure this evidentiary deficiency. As noted by the learned Banking Court, the report dated 02.01.1995 was relied upon to suggest that the machinery had been installed at the premises of Respondents Nos.1 and 2 and was being used for production.

However, the lease agreement was executed subsequently, on 19.01.1995. The appellant failed to furnish any satisfactory explanation or supporting evidence reconciling this discrepancy or establishing that the machinery had been installed and delivered to the alleged lessees in connection with the transaction in question. In these circumstances, the survey report, in the absence of corroborative evidence, could not conclusively establish delivery of the leased assets to Respondents Nos.1 and 2.

14. Equally significant is the appellant's failure to produce any reliable documentary acknowledgment evidencing receipt of the machinery by Respondents Nos.1 and 2. The payment made to Respondent No.3 may establish that the appellant disbursed the amount to the supplier in pursuance of the proposed transaction; however, such payment cannot, in law, be treated as a substitute for proof that the machinery was actually supplied to the persons against whom recovery of the lease rentals was sought. The learned Banking Court, therefore, rightly distinguished between payment to the supplier and proof of delivery to the alleged lessees.

15. The appellant also relied upon an alleged letter dated 03.06.1997 concerning the outstanding lease rentals and adjustment of the proceeds of investment certificates. The learned Banking Court examined the said document and found that its genuineness had not been established. Respondent No.2 specifically denied the document, asserting that it was false and fabricated and that the letterhead on which it purportedly appeared had neither been printed nor signed by him. The appellant failed to adduce any evidence to rebut this specific denial. Moreover, the record does not show that the appellant put any suggestion to Respondent No.2, during his examination, challenging his denial or establishing the authenticity of the disputed letter. The learned Banking Court also exercised its power under Article 84 of the Qanun-e-Shahadat Order, 1984, and compared the disputed signature with the admitted signatures available on record, finding them to be materially different. In the absence of reliable evidence establishing its

authenticity, the alleged letter, produced as Annexure “J” to the plaint, could not be relied upon to fasten liability upon Respondents Nos.1 and 2. The learned Banking Court's conclusion regarding the document's genuineness, therefore, suffers from no apparent legal infirmity warranting interference.

16. The learned Banking Court also considered the appellant's claims relating to the alleged payment of lease rentals and the return of title documents. Its conclusions on these issues were founded upon the failure to establish the essential fact of delivery of the leased machinery to Respondents Nos.1 and 2. In the absence of proof of delivery, the appellant could not claim recovery of the alleged outstanding rentals from them merely on the strength of the leasing documents. Upon examination of the available record, we find no material to suggest that the learned Banking Court misread or disregarded any material evidence or otherwise arrived at a conclusion warranting interference by this Court.

17. Conversely, the learned Banking Court found that the appellant had paid Rs.6,82,000/- to Respondent No.3 towards the supply of the leased machinery, but had failed, despite being afforded an opportunity, to establish its delivery to Respondents Nos.1 and 2. Consequently, Respondent No.3 was held liable to refund the amount received, together with costs and future mark-up at the rate applicable to similar financing extended by the appellant, until payment or recovery. The appellant has failed to identify any legal or factual infirmity in this part of the impugned judgment and decree that would justify interference by this Court.

18. It is a settled principle of law that an appellate Court does not ordinarily interfere with findings of fact merely because another view of the evidence may be possible. Interference is justified where such findings are contrary to the record, result from misreading or non-reading of material evidence, or are otherwise legally unsustainable. In the present case, the appellant has failed to establish any such infirmity. The learned Banking Court considered the material issues, evaluated the

evidence available on record and recorded reasons in support of its conclusions. We, therefore, find no justification for substituting its findings with a different view.

19. For the foregoing reasons, the instant appeal, being devoid of merit, is **dismissed**. The impugned judgment and decree dated 25.07.2000 passed by the learned Banking Court No.IV, Karachi, in Suit No.106/1999 are **maintained**.

JUDGE

JUDGE

KAMRAN/PS