

JUDGMENT SHEET
LAHORE HIGH COURT, MULTAN BENCH,
MULTAN.
JUDICIAL DEPARTMENT

R.F.A. No. 299 of 2022

JUDGMENT

Muhammad Farooq
VERSUS
Zarai Taraqati Bank Limited

Date of hearing: 20.06.2023

Appellant by: Muhammad Suleman Bhatti, Advocate.
Respondents by: Rao Riasat Ali Khan, Advocate.

MUZAMIL AKHTAR SHABIR, J. Through this appeal filed under Section 22 of Financial Institutions (Recovery of Finances) Ordinance, 2001 (“**the Ordinance**”), the appellant (judgment-debtor) has called in question the judgment & decree dated 15.08.2022 (“**impugned decree**”) passed by learned Judge Banking Court No.II, Multan (“**Banking Court**”) whereby application for leave to defend filed by the appellant under section 10 of the Ordinance has been dismissed and the recovery suit filed by the respondent-bank under section 9 of the Ordinance was decreed to the tune of Rs.939,085.86 against the appellant, in favour of respondent-bank.

2. It is contended by learned counsel for the appellant that admittedly original documents relating to finance advanced to the appellant were not available with the respondent-bank and the claim of the appellant was that the said documents had been returned to the appellant on repayment of loan, whereas on the other hand the claim of the respondent was that the said documents had been snatched by the appellant from the officer of the Bank, which was a triable issue therefore, to establish genuineness of the claim of the parties, the Court was required to grant to the appellant leave to defend the suit

but the said aspect of the matter was not given due consideration by Judge Banking Court while dismissing the application for leave to defend filed by the appellant solely on the ground that it did not meet with requirements of section 10 of the Ordinance, resulting in the suit for recovery filed by the respondent-bank being decreed against the appellant, which according to the learned counsel was not sustainable and liable to be set aside.

3. On the other hand, learned counsel for respondent-bank has defend the impugned order by stating that appellant himself had snatched the original documents from officers of respondent-bank for which an F.I.R. was registered against the appellant and the respondent-Bank filed the titled recovery suit with which scanned copies of original documents retained in the office of respondent-bank were attached, which documents were as good as the original documents and clearly establish the claim of respondent-bank against the appellant, besides the appellant had not raised any legal or factual ground entitling the appellant for grant of leave to defend and *inter alia* on the basis of aforementioned grounds it is claimed that while rightly dismissing the application for leave to defend, suit was decreed against the appellant.

4. We have heard the learned counsel for the parties and perused the record with their able assistance.

5. Perusal of the record shows that the respondent-bank filed suit for recovery of Rs.1,001,170/- along with markup and cost of funds and other charges till realization under Section 9 of the Ordinance by claiming therein that appellant applied to the respondent-bank for obtaining Agricultural loan in the heads of production and development finances which were sanctioned for Rs. 8,80,000/- and disbursed on 12.09.2019 under the G.L. Head nos. 9160, 9303, 9417 and 9018 of Rs.270,000/-, Rs.270,000/-, Rs.110,000/- and Rs.230,000/- repayable with mark-up rates of 14%, 14.8%, 14.8% and 14% respectively according to bank policy. For obtaining the said

loan/Finance facility, the appellant mortgaged his agricultural property measuring 40 Kanals and 15 Marlas in Mouza Laabar, Tehsil Multan details of which were mentioned in his Zarai Pass book No. 023608 and encumbrance/mortgage mutation No. 4630 dated 28.03.2013 of his agricultural land was entered the revenue record in favour of respondent-bank and for the said purpose the appellant also executed Loan application, Finance Agreement, Sanction Advice, D.P. Note, Charge creation certificate, Acknowledgement and other concerned/relevant documents relating to loan. Afterwards obtaining loan, it is claimed that the appellant paid nothing and failed to liquidate the loan liability and a sum of Rs.1,001,170/- was outstanding against the appellant as on 28.08.2020. The appellant on being asked to pay the loan amount failed to adjust the same and on 11.06.2020 snatched the original loan case file from the Bank officers and refused to pay the outstanding amount, resulting in registration of FIR No. 572/2020 under Sections 353, 382, 379 & 186 PPC against the appellant with Police Station Muzaffarabad, Multan, proceedings under criminal law arising out of which are still pending with the court of competent jurisdiction. The appellant thereafter filed a suit for declaration titled Muhammad Farooque vs ZTBL to the effect that he had repaid all the outstanding loan amount and pass book was returned to him and thereafter nothing was due against him and prayed that mandatory injunction be granted against the appellant to issue NOC and to redeem the mortgaged property and not to demand any amount from the appellant. The same necessitated the filing of the instant suit for recovery by the respondent Bank against the appellant.

6. Appellant on being summoned filed application for leave to defend with the assertion that the appellant in the year 2013 availed a loan facility of Rs. 800,000/- from the respondent Bank, which was required to be repaid in 6 years by installments with last installment due to be paid in September, 2019 and the appellant had paid the said installments and requested the plaintiff bank to redeem property of the appellant. The respondent Bank manager promised to redeem the

property but lingered on with the same and although original pass book was returned back to the appellant yet redemption letter was not issued, consequently on 20.06.2020, petitioner filed a suit for declaration in the Banking Court which is still pending and in the meanwhile 11.06.2020 the Bank Manager got registered Criminal case bearing FIR No. 572 of 2020 against the appellant for snatching away original file from the Bank Manager. Although, appellant accepted having obtained loan facility in the year 2013 yet in his application for leave to defend mentioned that said facility had been repaid and original documents of finance facility were not available with the respondent-bank as the same had been returned on repayment of finance but the officers of respondent Bank has not made relevant corresponding entries in the record and it is claimed that no new finance facility/loan was obtained by the Appellant, however, it was not denied that F.I.R. for snatching of said documents from the officers of respondent-bank was registered against the appellant, and *inter alia* on the basis of the afore-mentioned circumstances, it was claimed that leave to defend was required to be granted to the appellant. For ready reference some excerpts of relevant portions of application for leave to defend are reproduced below:-

“1. That in 2013, petitioner /defendant availed a loan facility for Rs8,00,000/- from the plaintiff bank which was required to be paid in 6 years by installments, last installment was to be paid in September, 2019. The petitioner defendant accordingly paid the said installments and requested the plaintiff bank to redeem property of the petitioner/defendant. The respondent bank manager promised to redeem the property but lingered on the same, although original pass book was returned back to the petitioner but redemption letter was not issued, consequently on 20.06.2020, petitioner filed a suit for declaration in this Honorable Court which remained sub judice in this Honorable Court and was dismissed for non-prosecution on 02-11-2021, for the restoration of which application is being filed, in the meanwhile, bank manager on 11.06.2020 got registered Criminal Case bearing FIR No.572/20 against the petitioner on the allegations that petitioner had snatched original file from the plaintiff bank manager, hence, committed the offence, in which on 25.06.2020 petitioner/defendant filed pre-arrest bail application in the Court of Learned Session Judge, Multan which was entrusted to Mr. Izhar-ul-Haq, Learned Additional Session Judge, Multan for the decision in accordance with

law. The Learned Additional Session Judge, Multan, on 06.10.2020 was pleased to confirm pre-arrest bail of the petitioner in which for and against arguments were recorded. It was specifically mentioned that petitioner had already cleared the principal and mark up amount secured by him in the year 2013. As per FIR time of occurrence was mentioned as 07:30 a.m. in FIR, whereas, that was not working hours of the bank officials because in Pakistan opening time of banks is 9.00 a.m., that is why story narrated by bank officials in FIR was not accepted by the Learned Additional Sessions Judge, even otherwise, other merits of the case were also taken into consideration and finally case was found fit for grant of pre-arrest bail.

2.
.....

3. The bank officials while filing titled suit have claimed an amount of Rs. 8,80,000/- as disbursed amount against Loan Case No. 706127, while annexing voucher of Rs. 63,794/- and Cheque of Rs. 921,000/- in the name of the petitioner, which facts are sufficient to disbelieve the story put forward by the bank officials for establishing their case because in plaint different amounts under different heads are shown as disbursed amount whereas, through cheque of Rs. 921,000/- is shown disbursement of amount in one go, which is contrary to the record and documents produced by the bank itself.

4. In para No. 2 against column No. 2, date of disbursement of amount is shown as 12.09.2019 whereas, the expiry date is mentioned as 15.07.2019, meaning thereby, amount is required to be adjusted before its disbursement, somewhat how, other documents are also mentioned under the same analogy having no backing. Hence, case for grant of leave application is made out.

5. That no document is available with the bank except photocopies, which are pertaining to previous loan case and original of which are not available with the bank. The bank officials have also tempered dates and loan cases numbers, hence, petitioners case is fully made out.

6.
.....

7. That details in terms of Section 10(3)(4)(5)&(6) of the Financial Institutions (Recovery of Finances) Ordinance 2001 are as under:-

Finance availed:	Nil
Finance Repaid:	Nil
Outstanding:	Nil (Entire amount of outstanding liability is disputed).

8. That Section 9 of the Ordinance prescribes that suit of the Financial Institutions must be supported by all the

requisite documents including a valid statement of account. It is settled laws that both credit and debit entries should be particularized in such a manner that the statement discloses a true and fair picture. All the entries in the statement of account must be clearly described so as to ascertain from which account they have been entered and into which account the same were further transferred. It is specially averred that no valid statement of account is appended with the plaint neither the entries therein corroborated with other documents appended with the plaint. The statement of account attached with the plaint is not the statement of account as required under Section 4 of Banker's Books of Evidence Act. By mere verifying the document it does not attain the status of a true and valid statements, hence, no statement of account has been attached with the plaint which is a pre-requisite for filing a suit u/s 9 of Ordinance 2001, hence, the suit in the absence of statement of account is liable to be dismissed.

9.
.....

10. *That Section 9 of the Ordinance, as well as Article 48 of the Qanun-e-Shahadat Order, 1984, requires that the suit must be supported by relevant documents. The plaintiff has based its claim on the fact that the Finance Facility was provided, (the "Finance Facility"). However, there is no document to support this claim. Hence, suit is liable to be dismissed."*

7. The respondent bank controverted the stance of the appellant by filing reply to the application for leave to defend. The learned Banking Court did not agree with the stance taken by the appellant in its application for leave to defend and dismissed the same. The details are mentioned in the impugned order, however, this court has gone through the impugned order whereby the Banking Court has dealt with the stance of the appellant regarding non-availability of original documents with the respondent Bank. The excerpt of the relevant portion is reproduced below:-

"5. The defendant's version of fabrication of documents by the bank officials does not fall within the ambit of jurisdiction of this court. Moreover, the suit has been filed on 06.11.2020 and the defendant filed application for leave to defend the suit on 29.11.2021 and even till date, the defendant has not produced any document showing his intent to challenge the validity of documents produced by the plaintiff bank nor he filed any case against the alleged fraud committed by bank officials at any proper forum, which itself negates the story concocted by the defendant. Although original documents are not available with the plaintiff but

scanned attested copies have been produced by the plaintiff kept in due course of business by the financial institution. Mere oral assertion of the defendant without any supporting document or proof is not enough to draw any adverse presumption against the credibility of the documents and statements of accounts produced by the bank. The defendant has not specifically denied his signatures and thumb impression on the finance documents not did he produce any copy of request to the plaintiff for redemption of his property. The finance documents have duly been prepared and those are not violating any clause of Contract Act or Qanoon-e-Shahadat Ordinance 1984. The defendant has not produced any proof regarding repayment of loan along with his PLA. PLA is not fulfilling the requirements of Section 10(3&4) of FIO, 2001 and on this ground alone it is liable to be rejected under Section 10(6) of the ordinance *ibid*. As no substantial Question of law and fact has been raised for the determination of which recording of evidence is required, therefore, PLA is rejected being meritless.

(emphasis supplied)

8. The learned Banking Court after dismissing the PLA also decreed the suit filed by the respondent bank for Recovery of Rs. 9,39,085.86 in favour of the respondent Bank and against the appellant along with costs of suit and costs of funds from 01.03.2020 till the realization of decretal amount/outstanding amount. However, it was observed that any amount deposited by the appellant during pendency of the suit shall be deducted from the decretal amount.

9. We have noticed that the banking court has specifically observed that the appellant's/defendant's version of fabrication of documents by the bank officials does not fall within the ambit of jurisdiction of the Banking Court. The Banking Court further observed that although original documents are not available with the plaintiff (i.e. respondent Bank) but scanned attested copies have been produced by the plaintiff (i.e. respondent Bank) kept in due course of business by the financial institution and mere oral assertion of the defendant (i.e. appellant) without any supporting document or proof is not enough to draw any adverse presumption against the credibility of the documents and statements of accounts produced by the bank. These observations recorded by the Banking Court were not based on proper appreciation of the law and facts of the case and were not sustainable especially when in view of mandatory requirement of

Section 9 of Ordinance, the respondent bank was required to produce on record not only the duly certified statement of accounts certified under the Bankers Books Evidence Act, 1891 but plaint also was required to be supported by relevant documents relating to grant of finance, which implies that the said documents in original were assumed to be actually maintained by the bank in its office. The operative portion of section is reproduced below:

“9. Procedure of Banking Courts.- (1) Where a customer or a financial institution commits a default in fulfillment of any obligation with regard to any finance, the financial institution or, as the case may be, the customer, may institute a suit in the Banking Court by presenting a plaint which shall be verified on oath, in the case of a financial institution by the Branch Manager or such other officer of the financial institution as may be duly authorized in this behalf by power of attorney or otherwise.

(2) The plaint shall be supported by a statement of account which in the case of a financial institution shall be duly certified under the Bankers Books Evidence Act, 1891 (XVII of 1891), and all other relevant documents relating to the grant of finance. Copies of the plaint, statement of account and other relevant documents shall be filed with the Banking Court in sufficient numbers so that there is one set of copies for each defendant and one extra copy.

(3) The plaint, in the case of a suit for recovery instituted by a financial institution, shall specifically state__

(a) the amount of finance availed by the defendant from the financial institution;

(b) the amounts paid by the defendant to the financial institution and the dates of payment; and

(c) 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.”

(emphasis supplied)

10. It is also pertinent to mention here that the appellant as defendant was also required to file application for leave to defend in conformity with the mandatory provision of section 10 of the Ordinance, reproduced below;

“10. Leave to defend. _ (1) In any case in which the summons has been served on the defendant as provided for in sub-section (5) of section 9, the defendant shall not be entitled to defend the suit unless he obtains leave from the Banking Court as hereinafter provided to defend the same; and, in

default of his doing so, the allegations of fact in the plaint shall be deemed to be admitted and the Banking Court may pass a decree in favour of the plaintiff on the basis thereof or such other material as the Banking Court may require in the interests of justice.

(2) The defendant shall file the application for leave to defend within thirty days of the date of first service by any one of the modes laid down in sub-section (5) of section 9:

Provided that where service has been validly effected only through publication in the newspapers, the Banking Court may extend the time for filing an application for leave to defend if satisfied that the defendant did not have knowledge thereof.

(3) The application for leave to defend shall be in the form of a written statement, and shall contain a summary of the substantial questions of law as well as fact in respect of which, in the opinion of the defendant, evidence needs to be recorded.

(4) In the case of a suit for recovery instituted by a financial institution the application for leave to defend shall also specifically state the following —

(a) the amount of finance availed by the defendant from the financial institution; the amount paid by the defendant to the financial institution and the dates of payments;

(b) 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;

(c) 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,

(d) the amount if any which the defendant disputes as payable to the financial institution and facts in support thereof;

Explanation.- For the purposes of clause (b) any payment made to a financial institution by a customer in respect of a finance shall be appropriated first against other amounts relating to the finance and the balance, if any, against the principal amount of the finance.

(5) Where application for leave to defend submitted under the preceding sub-section is found to be materially incorrect at any stage of the proceedings, the defendant shall lose the right to defence and shall also be liable to pay penalty of not less than five percent of the amount to the claim, unless the defendant can establish that incorrect information was submitted as a result of a bona fide mistake.

(6) The application for leave to defend shall be accompanied by all the documents which, in the opinion of the defendant, support the substantial questions of law or fact raised by him.

(7) An application for leave to defend which does not comply with the requirements of subsections (3), (4) where applicable and (5) shall be rejected, unless the defendant discloses therein sufficient cause for his inability to comply with any such requirement.

11. The requirements of both sections 9 and 10 of the Ordinance have been declared to be mandatory by the Honourable Supreme Court of Pakistan in the case titled *Apollo Textile Mills Ltd. and others versus Soneri Bank Ltd.* (PLD 2012 SC 268). The operative portion of the judgment is reproduced below:-

“20. Dr. Farogh Naseem, learned Advocate Supreme Court for the petitioners placed heavy reliance on the judgment in the case of "Bankers Equity Limited through Principal Law Officer and 5 others v. Messrs Bentonite Pakistan Limited and 7 others" (2003 CLD 931), composed by one of us (Justice Muhammad Sair Ali) while in the Lahore High Court, Lahore. This judgment was maintained by an Hon'ble Division Bench in the case of "Bankers Equity Limited and 5 others v. Messrs Bentonite Pakistan Limited through Chief Executive and 7 others" (2010 CLD 651) and was also referred to and relied upon by various Hon'ble Benches in the cases quoted by the learned counsel. In this judgment both the above reproduced Sections i.e. sections 9 and 10 came under discussion. This judgment also bears identity of facts and the law to the case in hand. The defendants in the referred case also failed to particularize their objections and had not pleaded Accounts under section 10 of the Ordinance, 2001 like in the present case. Their petition for leave to defend was rejected under subsection (6) of section 10 ibid as under:--

“5.---Learned counsel for the applicants/defendants candidly admitted that no such account or tabulation was made in the PLA. In absence of such an account and for not being in the form of a written statement, the PLA was rejectable under subsection (6) of section 10 of the Ordinance, 2001, for not complying with the mandatory requirements of subsections (3) and (4) of section 10 ibid”.

Upon rejection of defendants petition for leave to defend the suit, the court on its own examination of the plaint of the plaintiff financial Institutions and the documents therewith, rejected the plaint as well by holding that:--

“7. subsection (2) of section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 makes it mandatory for a Banking institution to

*support its plaint in a suit against the customer by a Statement of Account duly certified under the Bankers' Books Evidence Act, 1891 and also by all other relevant documents relating to grant of finance. Without such a 'Statement of Account' filed along with the plaint, a customer will obviously remain totally unaware of the amount advanced, mark up charged and the basis, break up, premise, mode of calculation of account, nature of default and the actual amount of Bank's claim against the defendant-customer. He will thus be unable to frame his defence within the limited period prescribed by law, to show reasonable, serious and plausible grounds of contest to be able to seek and obtain leave to defend the suit. Absence of filing the requisite Statements of Account along with the plaint, will essentially amount to absence of providing adequate, proper and reasonable opportunity of defence to the defending customer. Being thus unable to file a proper leave petition within thirty days under section 10(2) of the Ordinance of 2001 or within twenty-one days under section 10(12) *ibid*, such a customer may or may not later be able to amend his leave petition. His defence shall thus be rendered illusory, hence denied. Upon the compliance a Banking Company with the provisions of section 9(2) of the Ordinance of 2001, depends the right of defence of a defendant in the summary suits as visualized under the Ordinance, wherefor, the filing of duly certified Statements of Account by a Banking company along with its plaint, cannot be taken to be a mere formality or a technicality. This provision can only be held to be mandatory. Without strict compliance wherewith, the plaint is incomplete and cannot become basis of a suit under this law".*

21. The similarity of the provisions legislated in sections 9 and 10 *ibid*, as discussed above, leads to identical consequences in the absence of the demanded Accounts and the documents. Suit of the plaintiff institution will be rejectable while defendants' leave petition will be exposed to rejection etc. A Plaintiff institution may be rendered unable or deficient in appropriately setting up its answers to the accounts, disputed amounts and facts of the defendant in reply to the leave application as per section 10(8) *ibid*. And that in the absence of the requisite accounts and the facts etc. in defence filed by a defendant in the leave petition, a plaintiff will remain unaware of the admitted or denied or disputed accounts and facts of the defendants, to adequately, seriously and reasonably pursue the suit and its trial. This will obviously defeat the intent and the object of the provided provisions of The Financial Institutions (Recovery of Finances) Ordinance, 2001).

22. Despite rejection of the leave petition as above, and loss of the right to defend the suit, the learned Advocate Supreme

Court for the petitioner/defendants insisted that the Courts should have considered the request of the petitioners for rejection of the plaint as in above referred case of “Bankers Equity Limited through Principal Law Officer and 5 others v. Messrs Bentonite Pakistan Limited and 7 others” (2003 CLD 931), on the purported basis of incomplete Statements of Accounts. The cases referred to by the learned counsel did adjudge that in the absence of the support of Statements of Accounts and finance documents, Bank’s plaint was liable to be rejected. The learned counsel does not appear to have examined the reasons upon which the said judgments were founded. Consequent upon the rejection of the leave petition, the defendants were deemed to have admitted the contents of the plaint. The defendants remained bound thereto. The Court of course was not so bound. It was not expected to proceed blindfolded. The court therefor in performance of its duty, itself examine in the said cases (as in this case) the plaint along with documents to decide as to whether the suit complied with the mandatory provisions of section 9 ibid or not and as to the nature of the order, judgment or decree to be passed by the Court.”

(emphasis supplied)

12. The afore-mentioned judgment of the Supreme Court of Pakistan was relied upon by this Court in case titled The Bank of Punjab versus Fazal Abbas and another (2020 CLD 977) and this Court dismissed the suit filed by the bank as not maintainable due to non-compliance of mandatory requirement of sub-sections 2 & 3 of section 9, by holding as under:

“9. The counsel for the appellant despite his hectic efforts has not been able to show us that the mandatory requirements of section 9(2&3) of the Ordinance had been properly followed and complied with, therefore, the suit filed by the appellant failing to comply with the aforesaid mandatory requirement of law was liable to be dismissed. Reliance is placed on Apollo Textile Mills Ltd and others v. Soneri Bank Limited (PLD 2012 SC 268). Consequently, the Banking Court was justified in deciding both the afore referred issues Nos. 3 and 5 against the appellant and dismissing the suit filed by the appellant. The appellant has failed to show any illegality, erroneous exercise of jurisdiction or misreading and non-reading of the relevant record to warrant interference in the well-founded judgment of the Banking Court whereby suit of the appellant has been dismissed.”

13. In the present case it was specifically mentioned in the application for leave to defend that loan financing facility of Rs.800,000/- was obtained by the appellant from respondent-bank in the year 2013 which was required to be repaid within six years till

September, 2019 and the same was repaid by the appellant and accordingly original passbook was returned to the appellant and the Manager of the bank promised to issue redemption letter to the appellant but never issued the same to the appellant and hence the appellant filed suit for declaration on 20.06.2020 to absolve him of the said finance facility and redeem his property. Manager, on the other hand, got registered F.I.R. No.572 of 2020 against appellant for snatching of original loan case file from the officers of respondent-bank and in the said case pre-arrest bail of the appellant was confirmed and the trial of the said case is still stated to be pending. An objection was raised by the respondent-bank that PLA was barred by time, however, the learned Judge Banking Court overruled the said objection and held PLA to be within time, however, declined the PLA on the ground that the appellant has categorically prayed that the amount of finance availed has been repaid and should have been mentioned the date of repayment which was not done whereas statements of accounts issued by the respondent-bank is in accordance with Bankers Book of Evidence Act, 1891 and while relying upon the said statement of account dismissed the application of PLA without taking into consideration the main ground raised by the appellant that original documents were not available with the respondent-bank and consequently suit without granting leave to defend could not have been decreed. In this scenario the dictates of latter portion of section 10 sub-section (7) of the Ordinance become important which provides that an application for leave to defend, which does not comply with the requirements of subsections (3), (4) where applicable and (5) shall be rejected, unless the defendant discloses therein sufficient cause for his inability to comply with any such requirement. The appellant had claimed that the original loan obtained in the year 2013 had been repaid and original documents had been returned and were not available with the bank and no subsequent loan was obtained in the year 2019 and the case had been filed on basis of fabricated and tempered copies of documents relating to previous loan/finance facility; hence amount of loan obtained, amount repaid and amount due were Nil.

These grounds were required to be considered while deciding application for leave to defend, but apparently the same has escaped the attention of the Banking Court and the court wrongly observed that the appellant's version of fabrication of documents by the bank officials does not fall within the ambit of jurisdiction of Banking Court, hence order of dismissal of application for leave to defend does not seem to be based on proper appreciation of record of the case and law on the subject.

14. Although, learned counsel for the respondent-bank states that duplicate file containing scanned document, which is as good as original, is retained by the respondent-bank in its records yet whether the said duplicate file is to be treated as good as its original file or not, or its' substitute and whether such documents could be treated as primary evidence or were required to be established through secondary evidence, are questions which were required to be determined; besides safekeeping of documents was also question which could have bearing upon final judgment to be arrived at in the matter. Keeping the afore-referred aspect of the matter in juxtaposition with the defence of the appellant that he had repaid the previous loan in the year 2019 in which original pass book/finance document were returned to him and remaining documents including NOC were promised to be issued by respondent-Bank including letter of redemption, etc. and no new loan was obtained by him in the year 2019 and in these circumstances, non-availability of original file with the respondent-bank, entitles the appellant for grant of leave to defend as the same raised substantial question of law and fact requiring recording of evidence for determination, which aspect of the matter has not been considered by the learned Banking Court.

15. Consequently, we set aside the impugned judgment & decree dated 15.08.2022 passed by Judge Banking Court No-II, Multan and remand the matter to the learned Banking Court by granting leave to defend to the appellant for decision of the matter afresh on its own merits in accordance with law.

16. For what has been discussed above, this appeal is **allowed** in the afore-referred terms.

(Safdar Saleem Shahid)
Judge

(Muzamil Akhtar Shabir)
Judge

Approved for reporting.

*MuzamilMohsin**