

Stereo. HCJDA 38.
Judgment Sheet

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

....

RFA No.30994/2022

Muhammad Javed Shafi, etc.

Versus

National Bank of Pakistan

JUDGMENT

Date of hearing: **25.10.2023.**

Appellants by: M/s Shahid Ikram Siddiqui,
Barrister Sajid Ikram Siddiqui,
Aakif Majeed, Asim Tufail Farooqi
and Sajid Hussain Qureshi
Advocates.

Respondent by: M/s Ambreen Moin and Zain-ul-
Abideen, Advocates.

ASIM HAFEEZ, J. This Regular First Appeal, under section 22 of the Financial Institutions (Recovery of Finances) Ordinance 2001 (“**Ordinance, 2001**”), is directed against the judgment and decree dated 14.04.2022 (**impugned judgment**), whereby learned Single Judge in chambers, exercising jurisdiction under the Ordinance, 2001, decreed the claim of respondent Financial Institution against the appellants, jointly and severally, for Rs.425,100,369.86 with costs of funds in terms of Section 3 of the Ordinance, 2001 and costs of the suit.

2. Facts essential for adjudication of the appeal are that respondent, on request made through appellant’s Board Resolution of 27.03.2018 and accompanied with loan

application, approved renewal and enhancement of Cash Finance [Pledge] Limit - CF-Facility -, through facility offer letter of 27.04.2018, which was accepted and followed by execution of finance and security documents, including promissory note, personal guarantees and letter of pledge [all executed post-facility offer letter]. Terms and condition of finance were contained in the facility offer letter and reiterated through Finance Agreement – having reference to Purchase price of Rs.400,000,000/- and Marked-up Price of Rs.474,301,370/-. Notably, Facility was valid till 31.03.2019.

Respondent Financial Institution alleged default and sued appellants under section 9 of the Ordinance, 2001. Appellants appeared and submitted applications for seeking unconditional leave to defend the suit, which applications were responded through replications. With reference to *PLA No.33155/2019*, respondent submitted Statement of Current Account of the appellant No.1 entity and copies of debit vouchers, with replication. Learned Judge Banking, upon finding absence of any substantial question of law and fact, dismissed applications for leave to defend, whereupon suit was decreed vide impugned judgment.

3. Learned counsels for the appellants contend that suit was not validly instituted, wherein authorization of the officer, for instituting suit, was deficient and defective, and unless Board Resolution, allegedly passed in the year 1994, is produced, the factum of authority of the Officer could not be

determined. Hence, institution of suit is defective. Refers to the case of "PICIC Commercial Bank Limited Vs. Spectrum Fisheries Limited" (**2006 CLD 440**), "Messrs Muzamil Brothers and another Vs. Saudi Pak Commercial Bank Limited through Manager" (**2006 CLD 1546**), Judgment dated 27.05.2021 in RFA No.80/2015.

Submits that appellants disputed claim of disbursement of funds, since no document was attached with the plaint to substantiate disbursement of facility. Adds that respondent submitted statement of account with replication, to which document no opportunity to object was allowed, therefore appellants are *per se* entitled for grant of unconditional leave to defend, in wake of placement of document with replication. Adds that statements of accounts attached with plaint and replication failed to meet the mandatory requirements of section 9 of the Ordinance, 2001 and provisions of Bankers' Books Evidence Act, 1891. Refers to the cases reported as, "Jamal Tube (Pvt) Ltd, Lahore through Chief Executive Officer and others Vs. First Punjab Modarba, Lahore" (**2021 CLD 1372**), "Decent Builders and Developers Vs. Standard Chartered Bank (Pakistan) Limited" (**2021 CLD 130**), "DECENT BUILDERS AND DEVELOPERS and others. Vs. STANDARD CHARTERED BANK (PAKISTAN) LIMITED." (**2021 CLD 130**), "Obaid Associates through Proprietor and another Vs. United Bank Limited" (**2021 CLD 1019**), "Messrs First Dawood Investment Bank Limited through Authorized officers / Attorneys Vs. Mrs. Anjum Saleem and 3 others" (**2016 CLD 920**), "Pak Oman Investment Company

Limited Vs. Chenab Limited and 9 others” (2016 CLD 1903), “The Bank of Punjab Vs. Arif Ali Shah Bukhari” (2016 CLD 1301), “BANK OF PUNJAB. VS. INTERNATIONAL CERAMICS LTD. and others.” (2013 CLD 1472), “Soneri Bank Limited Vs. Classic Denim Mills (Pvt) Limited and 3 others” (2011 CLD 408), “Nusrat Textile Mills Ltd and 8 others Vs. United Bank Ltd through Attorney” (2005 CLD 1421), “Messrs C.M. Textile Mills Pvt Limited through Chairman and 5 others Vs. Investment Corporation of Pakistan” (2004 CLD 587), “THE BANK OF PUNJAB. VS. FAZAL ABBAS and another.” (2020 CLD 977), “NIB BANK LIMITED through Authorized Officer and Special Attorney. Vs. MESSRS VENUS CHEMICALS PRIVATE LIMITED and others.” (2020 CLD 1227).

Further submits that appellants instituted suit for declaration-cum-rendition of accounts, wherein respondent Financial Institution had submitted application for seeking leave to defend, and leave was granted, whereupon issues were framed for the purposes of recording of evidence. Adds that one of the issues framed raises dispute qua disbursement of funds – which was also in dispute in suit instituted by the respondent. Submits that since issues were framed in appellant's suit, therefore it is imperative to grant leave to defend the suit to the appellants in respondents' suit, to consolidate the proceeding and record evidence on disputed issues. Adds that such course must be adopted to avoid conflicting decisions. Reliance is placed to the cases of “Zeeshan Energy Ltd and others Vs. Fysal Bank Ltd” (2014 SCMR

1048) and "Muhammad Nawaz Vs. Zarai Taraqiati Bank Limited through Manager and 2 others" (2013 CLD 1390).

Adds that mere posting of debit entries in the statement of account, appended with the plaint, identified as Funds TRF would not establish claim, for the purposes of decreeing the suit, unless corresponding credit entries were shown and established, which material link was lacking. Adds that statement of account appended with the replication cannot be read unless leave is granted. Adds that transfer entries have had to be explained with supporting documents, and failure to do the needful would necessitates grant of unconditional leave to defend. Reliance is placed on the cases of "Messrs Dhrala Oil Mills through Partners / Guarantors and 4 others" (2014 CLD 153), "Elblow Room and another Vs. MCB Bank Limited" (2014 CLD 985), "National Bank of Pakistan Vs. Messrs Amna Export (Private) Limited and 2 others" (2020 CLD 1243), "Habib-ur-Rehman and another Vs. Judge Banking Court No.4, Lahore and another" (2006 CLD 217) and "Messrs United Dairies Farms (Pvt) Limited and 4 others Vs. United Bank Limited" (2005 CLD 569).

Adds that various applications were filed, raising material issues, touching the maintainability of the suit, which were not decided, and this amounts to abdication of jurisdiction. Reliance is placed on the cases of "Nand Lal Vs. Askari Bank Ltd and others" (2018 CLD 1176) and "Messrs M.A. Chaudhry and 3 others Vs. National Bank of Pakistan, Faisalabad through General Attorney" (2005 CLD 875). Submits that fair

right to defend was not extended, which violates mandate of Article 10-A of the Constitution of Pakistan, 1973. Reliance is placed on the cases of "National Bank of Pakistan and 117 others Vs. SAF Textile Mills Ltd and another" (**PLD 2014 Supreme Court 283**) and "Apollo Textile Mills and others Vs. Soneri Bank Ltd" (**2012 CLD 337(SC)**).

4. Conversely, learned counsel appearing for respondent submits that statement of account pertaining to the loan account, showing adjustment of outstanding facility and fresh disbursement, was attached with the plaint, which meets the requirements of section 9 of the Ordinance, 2001 and Banker's Book Evidence Act 1891. Adds that statement of current account and debit vouchers were submitted to discredit the claim of the appellants, who were required to bring on record statement of current account but withheld said document deceptively. Submits that documents, finance and security, were executed to acknowledge the grant of finance facility by way of renewal – outstanding liability was adjusted, and fresh facility was disbursed, upon allowing draw-down subject to conditions, with the obligation of repayment till 31.03.2019. Adds that CF-Facility was secured against pledge of stock of sugar bags, which was acknowledged through the execution of letter of pledge.

5. Arguments Heard. Record perused.

6. We have re-read the judgment impugned and examined the record in the context of the submissions, whereafter we tend to disagree with the contentions of learned counsels for the appellants and affirm the judgment, for the reasons hereby follow.

No substantial question of law and fact was raised. Suit was validly instituted in terms of section 9 of the Ordinance, 2001. No specific denial qua execution of documents was forthcoming, genuineness thereof was convincingly established. Statements of accounts fulfil statutory requirements. No serious dispute is raised qua the entries, especially the credits entries in the loan accounts – which substantiate renewal of CF-facility, adjustment of overdue amounts and availability of CF-facility by way of revolving credit. Learned counsel emphasized on the objection against statement of current account and debit vouchers, attached with the replication, claiming grant of unconditional leave to defend. Appellants have not disputed or challenged the existence and identity of current account, in the name of the appellant No.1. Debit entries of Rs.374,999,475/- and Rs.25,000,525.00, on 03.05.2018 and 04.05.2018 in loan account correspond with credit entries in current account – and debit vouchers merely manifest effect given to the transaction reflected through entries in statement of loan statement. Appellants, while filing applications for leave to defend, for the purposes of meeting the requirements envisaged by sub-

section (4) of section 10 of Ordinance 2001, alleged certain payments, amounting to Rs.153,000,000/-, on 27.04.2018, and Rs.246,999,375/- on 30.04.2018 – accumulating to reflect overdue liability of Rs.399,999,375/. Was this amount paid by the appellants from personally arranged funds. No, this is not the plea raised. Mere lifting of entries from statement of loan account and claiming adjustment of liabilities is fallacious. This simple juggling of account is not convincing to allow unconditional accounts. Accounts depicted that outstanding liability of Rs.399,999,375/- was adjusted through credit entries and thereafter drawdown was allowed through making available funds – drawdown reconciled with the execution of the Letter of Pledge on 02.05.2018, affidavit dated 03.05.2018, acknowledging submission of Form-10 and fulfilment of requirement of registration of Charge with SECP. Synchronization between the dates of the execution of finance and security documents and entries in accounts matched with the terms of financing. Revolving facility was valid till 31.03.2019. Statement of current accounts provided with replication merely exposes the hollowness of plea of lack of disbursement of facility. It was in fact the obligation of the appellants / customers to provide statement of current accounts, in the first place, to dislodge the claim – since it was the primary obligation of the customer to raise substantial question(s) of law. Statement of loan account, showing disbursement of funds in the context of renewal of CF-Facility,

per se meets requirements of law, even if statement of current account is not reckoned. Failure to append current account statement with application for leave to defend raises presumption of withholding of material information, discrediting claim for grant of unconditional leave to defend. Series of applications filed, before grant of leave to defend, are of no consequence, when appellants failed to raise any substantial question of law and facts. Applications for leave to defend were submitted and same were decided. No question of denial of opportunity to defend arose. Judgments relied upon may constitute authorities in the context of facts involved therein, which have no applicability to facts of instant appeal. Bald denial of execution of finance and security documents is not convincing when numerous documents are otherwise available on record to substantiate the claim – comprising of Board Resolution for seeking renewal of CF-Facility, loan application, acceptance of terms of facility offer letter, execution of documents, finance and security, registration of charge with SECP, are sufficient to dismiss applications for grant of leave to defend, etc.

7. Mere institution of suit by the customer, seeking various declarations, and grant of unconditional leave to defend to the Financial Institution would not *per se* entitle appellants for grant of leave to defend in suit by Financial Institution, as rule of the thumb. Judgments referred in this behalf are distinguishable in context of the facts. Hence, no illegality is

found to justify interference in exercise of appellate jurisdiction.

8. Appeal is without merits and same is, therefore, **dismissed**. No order as to the costs.

Imtiaz Nasir/*

Approved for reporting.

Signed on 11.11.2023.

JUDGE

JUDGE