

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

C. O. S. No. 16637 / 2020

Silk Bank Limited

Versus

M/s Haseeb Waqas Sugar Mills Limited and 14 others

JUDGMENT

Date of Hearing:	13.11.2023
Plaintiff By:	Mr. Abdul Hameed Chohan, Advocate Ch. Sohail Khurshid, Advocate
Defendants No. 1 to 10 By:	Mr. Hasham Ahmad Khan, Advocate
Defendants No. 11 to 15 By:	Nemo

ABID HUSSAIN CHATTHA, J: This suit is instituted by the Plaintiff-Bank for recovery of Rs. 472,715,893.66/- with cost and cost of funds under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the “**Ordinance**”) against contesting Defendants No. 1 to 10 and Proforma Defendants No. 11 to 15.

2. The contents of the plaint reveal that Defendant No. 1 is a company incorporated under the company laws of Pakistan and upon its request was granted a Term Finance Facility (the “**Facility**”) by the Plaintiff-Bank against execution of finance and security documents. Defendant No. 2 as the Chief Executive Officer / Director and Defendants No. 3 to 9 as the Directors of Defendant No. 1 executed their personal guarantees for repayment of the Facility. Defendant No. 10 as an associated company of Defendant No. 1 also extended corporate guarantee regarding repayment of the Facility. Defendant No. 1 had set-up a sugar plant at Nankana Sahib and in order to shift the same to another location, it requested for grant of the Facility vide request letter dated 29.09.2015 which was accordingly, sanctioned to the tune of Rs. 600 million for a term of 05 years vide Facility Acceptance Letter dated 08.10.2015 on mark-up basis. The

requisite Agreement for Financing and ancillary finance and security documents were duly executed by Defendants No. 1 to 10. After availing the Facility, the same was defaulted and consequently, Defendant No. 1 requested to restructure the defaulted amount vide letter dated 02.12.2016 which culminated into Finance Restructuring Agreement dated 15.12.2016. Nevertheless, partial payment was made thereunder and the unpaid principal amount along with due mark-up was again requested to be restructured. In this respect, an Addendum dated 03.08.2018 was executed by Defendant No. 1, thereby, modifying the schedule of payment regarding the overdue balance restructured amount. However, Defendant No. 1 again defaulted and requested vide letter dated 27.02.2019 to further restructure the payable amount which led to the execution of last Finance Rescheduling Agreement dated 05.03.2019 accompanied with the execution of related finance and security documents. It is alleged that Defendant No. 1 once again defaulted pursuant thereto and consequently, Defendants No. 1 to 10 are, jointly and severally, liable to pay the suit amount, the details of which in compliance with the requirements of Section 9(3) of the Ordinance have been provided in paragraph No. 16 of the plaint. The alleged default is also admitted by Defendant No. 1 in its annual financial accounts for the years 2017 and 2018. Hence, this suit.

3. Defendants No. 1 to 10 in their application for leave to defend the suit submitted that they were actually made to sign various documents in connection with a bill discounting facility to the cane growers against cane purchase receipts which were misused by the Plaintiff-Bank to create a fictitious Facility and as such, the entire transaction listed in the plaint is a sham and paper transaction. It was further stated, *inter alia*, that the plaint is not supported by a certified copy of statement of accounts; the requirements of Section 9(3) of the Ordinance have not been complied with by the Plaintiff-Bank; Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 guarantees a right of fair trial through production of evidence; the mandatory necessary documents have not been appended with the plaint; the suit has not been competently instituted; the corporate guarantee of Defendant No. 10 is not valid and enforceable being beyond the scope of its Memorandum and Articles of Association; and the

suit is not maintainable having been instituted prematurely before the event of default. However, during the course of arguments, the aforesaid objections were not pressed except the last two issues which were termed as not only substantial but of the nature that cannot be resolved at the leave granting stage without recording of evidence. Accordingly, it was asserted that leave to defend the suit is liable to be granted.

4. Section 10(3) of the Ordinance ordains that the application for leave to defend shall be in the form of written statement and shall contain a summary of substantial questions of law as well as fact in respect of which, in the opinion of the defendant, evidence needs to be recorded. Further, Section 10(6) of the Ordinance obligates the defendant to append all the documents with the application for leave to defend which, in the opinion of the defendant, support the substantial questions of law and fact. The plaintiff has been conferred the right of filing a reply to the application for leave to defend under Section 10(8) of the Ordinance. Importantly, vesting discretion upon the Banking Court, Section 10(9) unequivocally proclaims that the Banking Court shall grant the defendant leave to defend the suit, if on consideration of the contents of the plaint, the application for leave to defend and the reply thereto, it is of the view that substantial questions of law or fact have been raised in respect of which evidence needs to be recorded.

5. It follows from the above provisions of law that in the last resort, the Banking Court can grant leave to defend only if it considers that a substantial question of law or fact has been raised which cannot be determined without recording of evidence. No distinction is made in terms of nature of the issue which can either be a question of law or fact or a mixed question of law and fact. Rather, the only test prescribed in this behalf is the opinion of the Banking Court to determine as to whether the same can be resolved with or without recording of evidence which in turn becomes the barometer to grant or refuse leave to defend to the defendant. Hence, the applicable test is liable to be employed with respect to determination of each issue depending upon its nature and the material required to answer the same.

6. The first issue as to whether the corporate guarantee of Defendant No. 10 is valid or enforceable being beyond the scope of its Memorandum and Articles of Association can be conveniently settled by interpretation of the Memorandum and Articles of Association of Defendant No. 10 which are appended with the application for leave to defend and are not disputed by the Plaintiff-Bank. Defendant No. 10 is an associated company of Defendant No. 1. The original Facility Offer Letter dated 08.10.2015 as part of security arrangements required Defendant No. 1 to provide corporate guarantee of Defendant No. 10 with the specific covenant that no units / assets of Defendant No. 10 shall be sold without prior written approval of the Plaintiff-Bank coupled with a written undertaking of Defendant No. 10 to this effect before the draw-down of the Facility. However, in case of sale of any units / assets of Defendant No. 10, all the sale proceeds were required to be routed through the Plaintiff-Bank with which the Facility of the Plaintiff-Bank shall be adjusted in full alongwith payment of up-to-date mark-up. The Board of Directors of Defendant No. 10 passed the resolution dated 21.09.2015 and approved the extending of corporate guarantee coupled with issuance of undertaking to enable Defendant No. 1 to secure the Facility. This was followed by execution of continuing corporate guarantee dated 08.10.2015 which constitutes a separate contract between Defendant No. 10 and the Plaintiff-Bank. In note 7.1.6 of the financial accounts of Defendant No. 1 for the year ended on 30.09.2017, the Facility of Rs. 390,000,000/- is acknowledged by Defendant No. 1 in terms of security of *Pari Passu* charge over all present and future fixed assets of Defendant No. 1 and corporate guarantee of Defendant No. 10 alongwith personal guarantees of Defendants No. 2 to 9 at mark-up rate of 6 months KIBOR + 2% per annum payable in twelve quarterly installments. Similarly, the Facility in the same terms is also acknowledged in the note 8.1.6 of the financial accounts of the year ended on 30.09.2018.

7. Defendant No. 1 or Defendant No. 10 from the date of grant of the Facility in 2015 till institution of this suit did not raise any objection with respect to the corporate guarantee extended by Defendant No. 10 for repayment of the Facility of Defendant No. 1. Clause (o) read with clause

(s) of the Memorandum of Association of Defendant No. 10 vests necessary borrowing and investment powers to the Board of Directors of Defendant No. 10 in its discretion. Clause (cc) thereof specifically empowers Defendant No. 10 to guarantee the performance of contracts and obligations in relation to the payment of any loan, debentures, stock, bonds and obligations or security issued by or in favour of the company and to guarantee the payment or return on such investment. Needless to state that execution of corporate guarantee by Defendant No. 10 in favour of Plaintiff-Bank was a separate contract and as such, Defendant No. 10 was obligated to honour and perform the same.

8. The Memorandum of Association of a company is the document which forms and constitutes the company. It defines its purposes and objectives for which it is incorporated and determines the ambit of relationship of a company with the outside world. The Articles of Association of a company deal with the internal management of the company and determine *inter se* relationship between the management and shareholders of the company listing rules as to how it is run, governed and owned. The jurisprudence regarding the scope of activities that a company can possibly undertake in terms of its Memorandum of Association has universally evolved over the years. Consequently, the traditional concept of an objective or activity undertaken by a company being *ultra vires* the scope of its Memorandum of Association has been immensely diluted. It is now well acknowledged that stipulations in the Memorandum of Association of a company are required to be liberally and broadly interpreted unless a particular act by the company is unlawful or is specifically prohibited. For reference, see case titled, “Pakistan Mobile Communication Ltd. and others v. Appellate Bench No. III, Securities and Exchange Commission of Pakistan and others” (2016 CLD 76). Increasingly, various jurisdictions in the world are moving to the concept that just like a natural person who may perform any lawful act, a company as a juristic person may also undertake any lawful act. As such, the concept of controlling the company in terms of its activities through its Memorandum of Association is fast eroding. Canada has abolished the doctrine by way of Section 15(1) of the Canada Business Corporations Act,

1985 which states that a corporation has the capacity and privileges of a natural person. New Zealand has also extended farewell to the requirements of Memorandum of Association and an object clause by the introduction of Section 16 of the Companies Act, 1993 which is reproduced below:-

“(1) Subject to this Act, any other enactment, and the general law, a company has, both within and outside New Zealand,-

(a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and

(b) for the purposes of paragraph (a), full rights, powers, and privileges.

(2) The constitution of a company may contain a provision relating to the capacity, rights, powers, or privileges of the company only if the provision restricts the capacity of the company or those rights, powers, and privileges.”

9. In English law, having an object clause is not a mandatory requirement for a company. According to Section 31(1) of the Companies Act, 2006, unless a company's Articles specifically restrict the objects of the company, its objects are unrestricted. The Sri Lanka Companies Act No. 7 of 2007 has also dispensed with, *inter alia*, the requirement of Memorandum of Association and object clause, thereby, granting the company the capacity to undertake any lawful business or activity or do any act or enter into any transaction and diversify away from its original business. Section 4 thereof, does away the requirement of a Memorandum and accordingly, the company needs only to submit Articles of Association at the time of incorporation and, thereby, dispenses with the *ultra vires* doctrine vis-à-vis the Memorandum of Association. However, although the law has removed the mandatory requirement of having an object clause, any company may specify its objects in its Articles if it wishes to do so.

10. In view of above, it is explicitly clear that most of the countries have partially or completely done away with the doctrine of *ultra vires* with respect to objects listed in the Memorandum of Association in order to simplify the incorporation process, reduce the costs of incorporation and remove commercial constrains on business activities to be undertaken by a

company. The idea is to offer maximum flexibility in corporate transactions to a company which previously was restricted in terms of activities to be undertaken by a company. According protection to third parties regarding their transactions with a company is also at the heart of the evolving jurisprudence. Therefore, after partial or complete abolition of Memorandum of Association, modern companies now possess much more freedom, capacity and discretion to engage in diverse business activities.

11. The modern trend of evolving jurisdiction on the subject is duly recognized in Pakistan through promulgation of the Companies Act, 2017 (the “**Act**”). Section 18 of the Act stipulates that the effect of registration of the company in terms of its Memorandum and Articles of Association is that it is capable of exercising all the functions of an incorporated company, having perpetual succession and a common seal. Section 30 of the Act provides that notwithstanding anything contained in this Act or any other law for the time being in force or the Memorandum and Articles, the Memorandum and Articles of a company shall be deemed to include and always to have included the power to enter into any agreement for obtaining loans, advances, finances or credit, as defined in the Banking Companies Ordinance, 1962 and to issue other securities not based on interest for raising resources from a scheduled bank, a financial institution or general public. Section 26(1) of the Act states that a company may carry on or undertake any lawful business or activity and do any act or enter into any transaction being incidental and ancillary thereto which is necessary in attaining its business activities provided that the principal line of business of the company shall be mentioned in the Memorandum of Association of the company which shall always commensurate with name of the company. Further, Section 26(2) thereof proclaims that a company shall not engage in a business which is either prohibited or is restricted by any law, rules or regulations, unless necessary license, registration, permission or approval has been obtained or compliance with any other conditions has been made. Importantly, Section 27 of the Act prescribes the necessary ingredients of Memorandum of Association of a company limited by shares and as part of its objects, it only requires the company to state its principal line of business and allows it to carry on or engage in any business. The prescribed

form of Memorandum of Association of a company limited by shares in Table B of First Schedule to the Act requires to list a positive and a negative covenant with respect to the powers of the company which it may or may not do. The positive covenant in Clause 3(ii) thereof provides that except for the businesses mentioned in Clause 3(iii) thereof, the company shall engage in all the lawful businesses and shall be authorized to take all necessary steps and actions in connection therewith and ancillary thereto. The negative covenant in terms of Clause 3(iii) thereof imposes restrictions with respect to regulated businesses requiring licenses or approvals or prohibits businesses or acts which are either unlawful or forbidden or restricted. Therefore, the Act has effectively altered the traditional doctrine of *ultra vires* vis-à-vis the objects being beyond the scope of Memorandum of Association of a company. Hence, the observations in case titled, “Lucky Cement Ltd. v. Commissioner Income Tax, Zone Companies, Circle-5, Peshawar” (**2015 SCMR 1494**) are inapplicable after the enactment of the Act regarding the Memorandum of Association of a company.

12. Therefore, it is safely concluded from the above analyses that Defendants No. 1 and 10 being associated companies in terms of Section 2(4) of the Act and being in existence under the Act were fully competent to obtain and secure the Facility and as such, the objection to the effect that extending of corporate guarantee by Defendant No. 10 was beyond the scope of its Memorandum of Association is turned down.

13. The second issue soliciting resolution is as to whether the suit has been instituted prematurely as on the date of its institution, Defendant No. 1 had not defaulted in terms of the last Finance Rescheduling Agreement read with the Agreement for Financing on mark-up basis both dated 05.03.2019. The said Finance Rescheduling Agreement relates to rescheduling of balance payment of the Facility consisting of principal amount of Rs. 390,000,000/- and mark-up of Rs. 35,792,917.81/- till 21.02.2019 which was payable in terms of Annexures A & B (schedule of payments). It also stipulates that mark-up on the outstanding restructured Finance will be payable @ 1 year KIBOR + 2% per annum with the caveat

that mark-up accounting mythology in Annexure-B shall be valid for book-keeping symbolizing tentative amounts and the actual amount of installments shall be determined at the agreed rate. It was further agreed in Clause 9 thereof, that in case of default in payment of any installment or part thereof, the restructured arrangement will be cancelled and the Plaintiff-Bank shall be entitled to recover the entire outstanding liabilities without any further reference to Defendant No. 1. Clause 14(9) thereof, *inter alia*, states that failure of Defendant No. 1 to pay any installment or part thereof of restructured Finance on due date shall constitute an event of default. The first installment of Rs. 39,000,000/- regarding the principal component of the restructured Finance as per Annexure-A was payable on 21.08.2020, whereas, the suit was instituted on 18.03.2020 based upon the mistaken belief that tentative cumulating mark-up being carried forward from the date of restructured Finance listed in Annexure-A had become payable on 21.08.2019 but the same was not paid, thus constituting default before the date of institution of the suit. However, actually mark-up was payable under Annexure-B over a period of two years in eight quarterly installments starting from 21.05.2025 after settlement of the restructured Facility. Learned counsel for Defendants No. 1 to 10 when confronted as to whether any amount was paid against the restructured Facility after institution of the suit, candidly admitted that no payment was made as the Plaintiff-Bank had prematurely triggered the event of default and had initiated litigation. Hence, the suit was instituted prematurely by the Plaintiff-Bank before the event of default by Defendant No. 1 although the event of default had matured during the pendency of the suit.

14. The proposition that emerges from the above eventuality is that what are the consequences and way forward when a suit for recovery under the Ordinance is instituted prematurely but matures during its pendency. In case titled, "Abdur Razaq v. Abdul Hamid" (**1979 SCMR 534**), a similar question was dilated upon by the Supreme Court of Pakistan with respect to ejectment application under the West Pakistan Urban Rent Restriction Ordinance, 1959 in terms of default of a tenant vis-à-vis his rights under the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (the "**Act of 1958**"). It was found that the tenant was not in breach of any of his

obligations prescribed under the provisions of the Act of 1958, therefore, he could not be evicted until the expiry of statutory period of six years from the specified date. However, during pendency of the ejectment application, the said period of six years elapsed. Accordingly, it was held that no doubt the eviction application was filed before expiry of statutory period of six years but the said provision of law only prescribed that it would not be lawful to eject the tenant before the expiry of six years, however, there was no prohibition that a transferee of property could not file ejectment application against a tenant before the expiry of statutory period of six years. It was further held that if the ejectment application had been allowed before the period of statutory protection of six years accorded under the Act of 1958, the order of the Rent Controller would have been illegal but as the order was passed after the expiry of six years, it merely decided a right which had matured before the date of order on the ejectment application. Hence, although the eviction application was filed prematurely but to have dismissed it on this ground would amount to deprive the ejectment applicant of a right which became vested in him under the law. Conversely, if the ejectment application had been dismissed on the score of being premature on the date of its filing, the only result of such order would have been that the ejectment applicant would have to file a fresh application which would have been decreed in due course but after the proverbial delays of law. Therefore, it would amount to subject the ejectment applicant to unnecessary technicalities of law which would defeat the very object of the legislature in promulgating the law. Importantly, a passage by Mulla from his book on the Code of Civil Procedure (12th Edition) was cited at page 612 which being relevant is reproduced as under:-

“Ordinarily, the decree in a suit should accord with the rights of the parties as they stand at the date of its institution. But where it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate, or that it is necessary to have the decision of the Court in the altered circumstances in order to shorten litigation or to do complete justice between the parties, it is incumbent upon the Court of justice to take notice of events which have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time the decree is made.”

For reference also see cases titled, “Precision Engineering Ltd. and others v. The Grays Leasing Limited” (**PLD 2000 Lahore 290**); and “Managing Director, Oil and Gas Development Company Ltd. v. Syed Najmul Hassan Naqvi” (**2005 SCMR 890**).

15. The Indian Supreme Court in case titled, “Vithalbhai (P) Ltd. v. Union Bank of India” [(2005) 4 Supreme Court Cases 315] has dealt with a similar question and opined that a suit of civil nature disclosing a cause of action even if instituted before the date on which the plaintiff became actually entitled to sue and claim the relief, if subsequently matures, is not to be necessarily dismissed for such reason. The question of suit being premature does not go to the root of jurisdiction of the Court and as such, the Court entertaining such a suit and passing decree therein is not acting without jurisdiction but it is in the judicial discretion of the Court to grant or refuse decree. The Court would examine whether any irreparable prejudice was caused to the defendant on account of the suit having been instituted a little before the date on which the plaintiff's entitlement to relief became due and whether by granting the relief in such suit, a manifest injustice would be caused to the defendant. Taking into consideration, the explanation offered by the plaintiff for institution of suit before the date of maturity of cause of action, the Court may deny the plaintiff his costs or may make such other order adjusting equities and satisfying the ends of justice as it may deem fit in its discretion. The conduct of the parties and unmerited advantage to the plaintiff or disadvantage amounting to prejudice to the defendant, if any, would be relevant factors. However, certain riders are also stated in the said Judgment to the general rule to grant decree in judicial discretion upon maturity of a cause of action including when a mandatory bar is created by a statute which disables the plaintiff from instituting the suit on or before a particular date or the occurrence of a particular event or if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the jurisdiction of the Court.

16. The Ordinance is a special law which creates specialized Courts and prescribes a summary procedure for settlement of claims between a

‘customer’ and a ‘financial institution’. Section 9 of the Ordinance unequivocally provides that where a ‘customer’ or ‘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. There is no cavil to the proposition that a suit by a ‘financial institution’ or a ‘customer’ can thus be instituted by one against the other only in case of a ‘default’ in fulfillment of any ‘obligation’ with respect to any ‘finance’. However, the substance of the Ordinance is to determine the entitlement of a ‘financial institution’ or a ‘customer’ with respect to a right emanating with respect to ‘default’ in fulfillment of any ‘obligation’ with regard to any ‘finance’. The alleged ‘default’ in the plaint agitated by the plaintiff is tentative based upon the opinion of the plaintiff which obviously is required to be determined and adjudicated by the Banking Court under the Ordinance. If the Banking Court discovers that the alleged default has in fact taken place, it may decree the suit or conversely, if it finds that the alleged default has not occurred, it will dismiss the suit. Hence, the right of a ‘customer’ or a ‘financial institution’ to institute a suit is based on its assessment that a default has taken place but the same is liable to be determined by the Banking Court after adjudication as to whether it actually took place or otherwise. Thus, in case the Banking Court concludes that the ‘default’ alleged in the plaint was non-existent at the time of institution of the suit but it matured due of afflux of time during the pendency of the suit, the Banking Court in exercise of judicial discretion, can grant relief by decreeing the suit. In the instant case, as the default has already matured, therefore, dismissing the suit by granting the right to the Plaintiff-Bank to institute a fresh suit would serve no useful purpose and would amount to an exercise in futility to be undertaken again by the parties and the Banking Court. Accordingly, the contention of premature institution of the suit is answered on the score that the alleged default has matured during the pendency of the suit. However, in order to penalize the Plaintiff-Bank for having instituted a premature suit, a fine to the tune of Rs. 5,000,000/- is imposed upon the Plaintiff-Bank in favour of Defendant No. 1 in terms of Section 21 of the Ordinance in order to adjust equities between the parties.

The question having been so determined without the need for recording evidence, the application for leave to defend the suit instituted by Defendants No. 1 to 10 is rejected.

17. The Proforma Defendants have been arrayed as parties to the suit as they have also extended various finance facilities to Defendant No. 1 against various charges and securities. Defendants No. 11, 13 & 14 filed their separate applications for leave to defend highlighting their facilities and existing charges, whereas, Defendants No. 12 & 15 did not file any application for leave to defend. None of the Proforma Defendants contested the claim of the Plaintiff-Bank on merits. The claims of the Proforma Defendants based upon their separate facilities in terms of their corresponding securities and charges will be decided at the time of execution. The applications for leave to defend of Defendants No. 11, 13 & 14 are disposed of, accordingly.

18. From the above, it is manifestly evident that Defendant No. 1 availed the Facility from the Plaintiff-Bank which was restructured on a number of occasions on account of default by Defendant No. 1. Finally, Defendant No. 1 defaulted the Facility under the Finance Rescheduling Agreement dated 05.03.2019 which matured during the pendency of the suit. The plaint is supported by all necessary finance and security documents. It is also accompanied with the certified Statement of Accounts. As not a single instalment either with respect to principal or mark-up component was paid under the Finance Rescheduling Agreement dated 05.03.2019, therefore, the question to determine the amount due in terms of any payment made by Defendant No. 1 does not arise. The principal and mark-up components under the last Finance Restructuring Agreement dated 05.03.2019 are Rs. 390,000,000/- and Rs. 35,792,917.81/-, respectively, the sum total of which amounts to Rs. 425,792,917.81/- as on 21.02.2019. Nothing was paid thereafter against the said amount. After deducting the amount of fine of Rs. 5,000,000/- imposed on the Plaintiff-Bank, this amount comes to Rs. 420,792,917.81. The additional amount of claimed mark-up in the suit is denied. The date of default is declared as 22.02.2019 and cost of funds are allowed from the said date.

19. In view of the above, the suit of the Plaintiff-Bank is **decreed**, jointly and severally, against Defendants No. 1 to 10 for recovery of Rs. 420,792,917.81/- with costs and cost of funds from the date of default i.e. 22.02.2019 under Section 3 read with Section 17 of the Ordinance. Decree sheet be prepared, accordingly. The Decree shall stand converted into execution proceedings in terms of Section 19(1) of the Ordinance and the case shall be fixed for hearing after expiry of 30 days from the date of this Judgment and Decree on a date to be fixed by the Office.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

Announced in open Court on **29.11.2023**.

Judge

Abu Bakker