

Judgment Sheet

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

Case No:COS No.21/2017.

National Bank of Pakistan Vs. M/s Salman Noman Enterprises Ltd. etc.

JUDGMENT

Date of hearing	13.06.2024
Plaintiff by	Ms. Ambreen Moeen, Advocate and Ms. Javeria Latif, Advocate
Defendants No.1 to 7 by:	M/s Aakif Majeed Butt Advocate, Hassan Ismail Advocate, Asim Tufail Farooqi Advocate and Muhammad Abdullah Jehangir, Advocate
Defendant No.11 by:	Mian Imran Mushtaq, Advocate
Defendants No.8 to 10 and 12 to 14 by:	Nemo

ABID AZIZ SHEIKH, J. This suit has been filed under section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (**Ordinance**), seeking recovery of Rs.23,49,86,002.72/- alongwith cost of the suit and cost of fund against the defendants by sale of mortgaged, pledged and hypothecated properties.

2. Brief facts as per averments of the plaint are that plaintiff bank upon request of defendant No.1 sanctioned various finance facilities from time to time (detail mentioned in para 8 of plaint), which were not only disbursed but also availed by defendant No.1. The said finance facilities were secured through mortgage, hypothecation charge and pledge stock. The defendants No.2 to 7 also executed their personal guarantees. The claim of the plaintiff bank is that the said finance facilities were renewed from time to time and last renewal and sanction was on 01.01.2016 with expiry date of 31.12.2016 but the defendants failed to repay the outstanding liability, hence this suit has been filed in respect of six outstanding finance facilities (mentioned in para 18 of the plaint). The defendant No.1 has been impleaded as principal borrower and mortgager, whereas defendants No.2 to 7 are impleaded as guarantors and defendants No.8 to 14 are proforma defendants against whom no relief has been claimed in suit.

3. In response to the summons, contesting defendants No.1 to 7 entered appearance and filed their joint application for leave to defend the suit (PLA No.26329-B/2017) (**PLA**). Learned counsel for defendants No. 1 to 7, while arguing the PLA submits that defendants No.4 to 7 are impleaded in this

suit being the guarantors for six facilities in question. Submits that no doubt defendants No. 2 to 7 executed their personal guarantees on 15.01.2013 (pages 619 to 623) but thereafter only defendants No.2 and 3 executed their personal guarantees on 19.05.2014, 13.12.2014 and 01.01.2016 in view of the offer letter dated 08.05.2014 (page 119), where specifically only defendants No.2 and 3 were required to execute the guarantees, hence defendants No. 4 to 7 have been discharged from their personal guarantees which was no more required after offer letter dated 08.05.2014. In respect of the pledge stock, he submits that the pledge stock was in custody of the plaintiff-Bank and therefore any shortfall in the pledge stock is the responsibility of the Bank and the defendants may be allowed the adjustment of the value of the stock. However, submits that this question can be decided by the Executing Court. In respect of the 'Demand Finance-1 Facility' (**DF-1**), he submits that as per offer letter dated 08.05.2014, the expiry date of DF-1 is 31.03.2016 whereas the markup of Rs.1.437 Million has been charged beyond expiry date 31.03.2016 (he referred to last three entries at page 682 of the suit). In respect of the 'Cash Finance Pledge Facility' (**CF pledge**), he submits that the said finance facility has been renewed on 01.01.2016 but the said renewal is not backed by any fresh offer letter and

the last offer letter was dated 08.05.2014. He further submits that in the plaint (page 19), it is shown that the debited amount is Rs.465 million whereas the credited amount is much more i.e. 545.2 million and therefore the outstanding amount of Rs.76 million is not justified. He submits that in any case, the aforesaid amount will go beyond the limit of CF pledge i.e. Rs.150 million mentioned in the offer letter. He submits that the ‘Brought Forward’ entry in the statement of account (at page 683) has not been explained in respect of CF pledge. At this stage, he also submits that the claim of the plaintiff-Bank that after the renewal of the finance facility, no disbursement was made, is not supported by record as there are number of disbursement entries in the statement of account including at page No.690 of the statement of account. He further submits that there are number of “transfer entries” in the statement of account without explaining from where the said amounts are debited or credited, hence this is a ground for leave to defend as per law settled in “Bank of Punjab Versus International Ceramics Ltd and others” (2013 CLD 1472) and Messrs DHRALA OIL MILLS through Partners/Guarantors and 4 others Versus The Bank of Punjab through Branch Manager (2014 CLD 153). He submits that even various ‘Letter of Credit’ (LC) facilities are not backed by any documents

including ‘Letter of Credit’ and ‘Bill of Lading’. Submits that defendants specifically disputed the amount of US\$ 79237.06 (page 227) paid under L.C. No.20810400923 being without any request letter from defendants. Submits that there is also no fresh offer letter for the LC facilities in 2016. He placed reliance on the judgment passed by the Division Bench of this Court in RFA No.335/2011 dated 03.05.2017 and RFA.1251/2014 dated 28.01.2020. Submits that in absence of the LC documents, the leave to defend be granted. He finally submits that regarding Cash Finance (**CF**) (Hypothecation) Facility, the Brought Forward entries are without any explanation (pages 698 and 699) and further submits that amounts debited i.e. Rs.86.317 Million under said facility is much less than amount credited i.e. Rs.90.318 million and hence there is no amount outstanding against the defendants.

4. Learned counsel for the plaintiff bank in response submits that the personal guarantees of defendants No.4 to 7 were executed on 15.01.2013 and the said guarantees being continuing guarantees, they will be liable for the outstanding amount notwithstanding the renewal of the finance facilities from time to time. Regarding the pledge stock, she submits that as constructive possession was with the defendant No.1, therefore, the plaintiff bank is not responsible for shortfall in

the pledge stock. She placed reliance on Messrs WORLD TRANS LOGISTICS and others vs. SILK BANK LIMITED and others (2016 SCMR 800). She however does not dispute that the markup of Rs.1.437 Million was beyond the expiry of finance agreement, therefore, the same may be deducted from the markup claimed in the suit. Submits that there is no need for any sanction letter for renewal of the finance facility in presence of finance agreement. Submits that the statement of account is not properly appreciated by the defendants, according to which Rs.76 Million is outstanding against Cash Finance pledge. Submits that even the ‘Brought Forward’ entries are admitted in the loan application form and in the annual audit reports, hence the said amount cannot be disputed here. Further submits that none of the alleged transfer entries are challenged in the PLA, therefore the same cannot be challenged during the arguments. Further submits that the same is the position with the CF hypothecation. Finally submits that entire LCs related documents are appended with the plaint and the amounts paid under the LCs are on the request of the defendant No.1.

5. I have heard learned counsel for the parties and perused the record with their able assistance. Regarding personal guarantees of defendants No.4 to 7, the record shows

that said guarantees were executed on 15.01.2013 to repay the amount under the agreement dated 15.01.2013 between the plaintiff bank and defendant No.1. However neither any such finance agreement dated 15.01.2013 has been appended with the suit nor the suit is based upon the said agreement. Admittedly the finance agreement regarding DF-1 and Demand Facility-2 (**DF-2**) between the plaintiff bank and defendant No.1 is dated 04.02.2013 which is after the execution of aforesaid personal guarantees dated 15.01.2013. It is also admitted by the plaintiff bank that the finance facilities in question were renewed vide sanction letter dated 08.05.2014, however in the said sanction letter, no fresh guarantees of defendants No.4 to 7 were required rather only personal guarantees of defendants No.2 and 3 being sponsor Directors of the company were sought and duly executed. It is also not disputed that the DF-1 and DF-2 facilities were renewed from time to time but no fresh guarantees were executed by defendants No.4 to 7. In the circumstances, the personal guarantees of defendants No.4 to 7 have no direct nexus with the outstanding liability under the finance agreements dated 04.02.2013 and if at all there was any connection, the said guarantees have been discharged under section 133 of the Contract Act, 1972 (**Contract Act**) when

vide sanction letter dated 08.05.2014, the finance facilities terms were varied and renewed but no fresh guarantees were required from defendants No.4 to 7 and only defendants No.2 and 3 being sponsored directors executed their personal guarantees.

6. Once the terms of the finance through sanction letter dated 08.05.2014 were changed and the defendants No.4 to 7 were not required to execute fresh personal guarantees and their guarantees were expressly omitted from security structure of finance facilities, the said defendants are discharged from their personal guarantees in view of law settled by this Court in COS No.48/2013 titled Bank of Punjab vs. Gulshan Spinning Mills Limited vide judgment dated 28.03.2018 where it is held as under:-

“7. The perusal of the record clearly shows that the plaintiff bank through offer letter dated 09.05.2012 did not require the personal guarantees of defendants No.2 and 4. Their guarantees were, therefore, expressly omitted from the security structure of the finance facilities. In this view of the matter, the plaintiff bank cannot press into service its claim against defendants No.2 and 4 notwithstanding any stipulation contained in the personal guarantees. Learned counsel for the plaintiff also did not seriously contest the defence put forward by defendants No.2 and 4 and stated that he will not press his claim against the said defendants.”

The same view was also expressed by this Court in RFA No.51/2015 titled Saudi Pak Leasing Company Limited vs.

Adil Textile Mills Limited etc. vide judgment dated 20.01.2020, where it is held as under:-

"12. We are in agreement with the contention made in regard to the guarantee allegedly executed by respondent No.5. Offer letter dated 29.03.2004 through which the lease facility was made available to the respondents does not reflect that respondent No.5 was required to submit her personal guarantee. Learned counsel for the appellant did not seriously contest the stance of the respondents and stated that he shall have no objection if personal liability of respondent No.5 is excluded from the judgment and decree passed by the Banking Court."

Reliance is placed on Naghma Arshad Toor and 2 others vs. Habib Bank Limited and another through sale Proprietor (2007 CLD 272) and Mrs. Yuba Jamil Ansari vs. Bank Al-Falah Limited and another (2009 CLD 1177).

7. Regarding claim of pledge stock, the Supreme Court as well as this Court repeatedly held that availability or otherwise of the pledge stock is a question that can be determined in execution proceedings at the time when collateral security is required to be accounted for and brought to the sale, therefore, it is not a ground of defence to the defendants for grant of leave. In this regard reliance is placed on Messrs Muhammad Siddiq Muhammad Umar and another vs. The Australasia Bank Ltd. (PLD 1966 SC 684), Habib Bank Limited vs. Orient Rice Mills Ltd. and others (2004 CLD 1289), Siddique Woollen Mills and others vs. Allied Bank of

Pakistan (2003 CLD 1033), Messrs Crystal Enterprises and 6 others vs. Platinum Commercial Bank Limited and 2 others through General Attorney (2002 CLD 868), Faisal Bank through duly appointed Attorneys vs. Messrs Zimindara Rice Mills and 21 others (2007 CLD 1164) and Messrs Khalid Oil Mills through Sole Proprietor and 2 others vs. Muslim Commercial Bank Limited through Manager/Attorney (2005 CLD 1565)). The law settled by the Supreme Court in case of Messrs WORLD TRANS LOGISTICS and others vs. SILK BANK LIMITED supra regarding the status of pledge stock with the bank being constructive possession, can also be examined by the Executing Court at the relevant time.

8. The claim of the defendants that markup of Rs.1.437 Million has been charged beyond the expiry date i.e. 31.03.2016 of the finance agreement regarding DF-1 is not only supported by record but also candidly conceded by learned counsel for the plaintiff, therefore, said amount is liable to be excluded from the suit amount. In this regard reliance is placed on I.C.P. and others vs. Messrs Chiniot Textile Mills Ltd. (PLD 1998 Karachi 316), Bashir Begum and 5 others vs. Agricultural Development Bank of Pakistan (2005 CLD 373), National Bank of Pakistan through Zonal Chief vs. Messrs Saif Nadeem Electro Limited and others

(2003 CLD 1468), Haji Fazal Elahi & Sons through Muhammad Tariq vs. Bank of Punjab and another (2004 CLD 162) and Askari Commercial Bank Limited and others vs. Pakland Cement and others (PLD 2000 Karachi 246).

9. The next argument of learned counsel for the defendants that the CF pledge facility is not backed by any sanction advice, hence not recoverable, is also misconceived. It is settled law that sanction advice is an internal document of the bank, which can be seen only to know what was approved by the bank, whereas Finance Agreement overrides all arrangements and in the agreement, vis-a-vis the Customer, the sanction advice cannot be construed to disadvantage the customer. It is also well settled that financial institution cannot be non-suited on the basis of mere non-production of sanction advice as there is no such requirement of law. In the present case, the CF pledge facility is backed by the finance agreement dated 01.01.2016 and there is no need for sanction advice, when the finance agreement duly executed between the parties, is available on record. Reliance is placed on United Bank Limited vs. M/s Hassan Muhammad Cotton Industries & Oil Mills and others (PLJ 2017 Lah. 415 (DB)), Habib Bank vs. Messrs Qayyum Spinning Ltd. (2001 MLD 1351), United Bank Ltd. Karachi vs. Messrs Gravure Packaging (Pvt.) Ltd.

and 4 others (2001 YLR 1549) and United Bank Limited vs. Messrs Central Cotton Mills Ltd. and 5 others (2001 MLD 78).

10. Even otherwise under section 9 of the Ordinance, the suit can be filed by a financial institution when a customer commits default in fulfilment of any obligation. The term ‘obligation’ under section 2(e) of the Ordinance include any agreement, therefore, the finance agreement itself is not only a sufficient document to establish default but also for filing of the suit. The purpose of sanction letter is only to support the finance agreement, if it is disputed, however placing on record the same is not a precondition to execute the finance agreement or for filing of a suit. Further the defendants have not denied the request letter and Board of Directors Resolution for the renewal of the short term finance through agreement dated 01.01.2016. In similar situation, in the case of Habib Bank Ltd vs. Taj Textile Mills Ltd. through Chief Executive and 5 others (2009 CLD 1143), this Court held that when the borrower has defaulted and requested for restructuring/renewal of loan which was granted by bank, plea for leave to defend the suit on its own force was not relevant, thus refused.

11. The plea of the learned counsel for the defendants that ‘Brought Forward’ entries are not explained, hence it is ground

for leave to defend has also no basis. The outstanding amount of all six facilities is admitted in the annual audit reports of defendant No.1 and further ‘Brought Forward’ entries relate to previous outstanding liabilities to the defendants which are not only admitted in the loan application forms but are also corroborated by the statement of accounts. The defendants have also not disputed the execution of previous charge documents. In the circumstances, the defendants could not question the ‘Brought Forward’ entries to which they were beneficiary and have specifically requested for renewal of outstanding loans through application alongwith Board of Directors Resolution etc. In this regard reliance is placed on Haq Nawaz and another vs. Habib Bank Limited through Manager, PAF Branch, Peshawar and 5 others (2021 CLD 1367).

12. Regarding “transfer entries” in the statement of account, no doubt this Court granted leave to defend in some cases, where specific entries were challenged being merely shown as “transfer entries” but in this case admittedly the defendants in their PLA have not challenged the said transfer entries specifically. Failure on the part of defendants to dispute entries in the statement of account at the relevant time when the same were sent to the defendants by the bank, is also hit by

principal of financial estoppel. In this regard reliance is placed on Messrs Naeem Zafar Industries and others vs. Bank of Punjab (2017 CLD 397), National Bank of Pakistan vs. Chenab Limited and others (2017 CLD 1539), Messrs Razzaq and Company v. Messrs Riazedha (Pvt.) Ltd; and International Finance Corporation v. Sarah Textiles Ltd. and 3 others (2009 CLD 761), Askari Bank Limited vs. Syed Zulfiqar Rizvi (2017 CLD 1298) and Allied Bank Limited vs. Messrs Fatima Enterprises Limited and others (2017 CLD 1711). The Supreme Court in Mrs. Asma Hassan and another vs. Askari Bank Limited (2019 SCMR 1873) also held that when any entry in the statement of account not specifically challenged, then it was to be presumed that the accounts prepared and maintained by the bank were correct. It is also settled law that when the specific plea is not raised in the PLA, the same cannot be argued to set up a new case beyond pleadings. Reliance is placed on Abrar Ahmed and another vs. Irshad Ahmed (PLD 2014 SC 331).

13. In respect of the LC facilities, claim of the defendants is that same are not backed by any documents and further no request was made by the defendants for payment of US \$79237.06 under LC No.20810400923. In this behalf I have carefully examined the documents. The plaintiff bank has

placed on record all relevant documents of LCs including application and agreement for irrevocable documentary credit, bill of exchange, letter of acceptance, trust receipts, letter to customer, commercial invoices, proforma invoices and bank statement alongwith suit. Further so far as the amount of US \$79237.6 is concerned, no doubt the original request dated 16.06.2015 of the defendant No.1 for opening of LC was for US \$79237.6, however further request was made on 24.06.2015 to enhance the amount to US \$159300 under said LC, which also covered the disputed amount of US \$79237.06, hence it cannot be said that the said payment was made without request of the defendant No.1.

14. The final argument of learned counsel for the defendants that the credit entries mentioned in the plaint as well as statement of accounts, are more than the debit entries, hence no amount is outstanding, is also misconceived. The statement of account shows that debit and credit entries mentioned therein are from 23.05.2014, however before the aforesaid date, there was already outstanding brought forward balance of Rs.142 Million. Therefore, credit entries are not only to adjust the debit entries but also the outstanding ‘Brought Forward’ balance of Rs.142 Million and after partial

adjustment, outstanding amount was Rs.76 Million against CF (Pledge) was correctly claimed in the suit.

15. In view of above discussion, subject to deletion of amount of excess markup of Rs.1.437 Million, recovered after the expiry of finance agreement, the plaintiff claim in the suit is substantiated by agreements, statement of accounts as well as charge documents against defendants No.1, 2 and 3 and said defendants have not been able to raise any substantial question of law or fact requiring recording of evidence for its resolution. However the plaintiff bank could not establish its claim against defendants No.4 to 7 being guarantors as discussed in preceding paras of this judgment. Consequently **the PLA is dismissed and the suit of the plaintiff bank is decreed** in favour of the plaintiff bank and against defendants No.1 to 3 jointly and severally for amount of Rs.23,35,49,002.72/-together with cost and cost of fund as contemplated by section 3 of the Ordinance and will be recoverable by sale of mortgaged, pledged and hypothecated properties. Decree sheet be prepared accordingly.

16. Defendants No.8 to 14 are proforma defendants and no relief has been claimed against them, hence their PLAs No.28951/2017, 30837/2017, 30979/2017, 151992/2018 and 5126/2019 are disposed of accordingly.

17. The decree is now converted into execution proceedings under section 19 of the Ordinance. The decree holder will submit Fard Taleeqa/list of mortgaged, pledged and hypothecated properties of the judgment debtors forthwith.

(Abid Aziz Sheikh)
Judge

Approved for reporting.

Judge

Riaz Ahmad