

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE FAISAL ARAB

CIVIL APPEAL NOS. 2105 & 2106 OF 2008

(On appeal against the judgment dated 18.1.2008 passed by the High Court of Sindh, Karachi in Spl. HCA No. 29/2001 and First Appeal No. 01/1998)

Miss Rukhsana Murrad etc

(In both cases)

... Appellants

VERSUS

National Bank of Pakistan

(In both cases)

... Respondents

For the Appellants: Syed Iftikhar Hussain Gillani, Sr. ASC

For the Respondent: Mr. M. Rasheed Qamar, ASC

Date of Hearing: 02.05.2017

JUDGMENT

FAISAL ARAB, J.- Leather Goods International

(hereinafter referred to as 'LGI'), a sole proprietorship concern of the predecessor-in-interest of the appellants was engaged in the manufacture and export of leather garments. For its production needs, it had been availing financial facilities from respondent bank from time to time. The case of the respondent bank is that in January, 1987, LGI applied for a running finance facility which was sanctioned on 25.01.1987 to the extent of Rs.675,000.00. In this regard, LGI executed an agreement of finance on 18.02.1987. The finance was repayable with markup by 30.06.1987. To secure this financial facility, LGI pledged its goods, hypothecated its machinery, assigned the proceeds of life insurance policy of its proprietor, created equitable mortgage on Plot No. 16-C Lane 9, Phase-II Extension, Defence

Housing Authority, Karachi and executed a promissory note. All security documents were also executed on 18.02.1987. As against such facility, substantial part of outstanding amount and markup was recovered leaving a balance of Rs.261,775.76.

2. To seek recovery of the remaining amount, the respondent bank served a legal notice upon LGI on 19.09.1988 but it failed to make any payment. The respondent bank was thus constrained to file suit for recovery on 28.08.1989 in the Banking Tribunal for Sindh and Balochistan at Karachi. This suit was later numbered as 905/1991. In the written statement, LGI denied that it availed any finance under the agreement dated 18.02.1987 and termed all documents executed on 18.02.1987 to be forged. In this manner, the validity of the claim made in the banking suit was questioned. The parties then adduced their respective evidence. The Banking Court dismissed the suit on 18.08.1997 after holding that no amount was disbursed under the agreement of finance dated 18.02.1987. The respondent bank then preferred appeal. In the meanwhile, having succeeded in getting the banking suit filed by respondent bank dismissed on 18.08.1997, LGI filed its own suit in 1998 bearing No. 773/1998 claiming damages. In the suit for damages, it was claimed that recoveries made under the agreement dated 18.02.1987, when no finance was disbursed, caused a huge loss of business to LGI including sale of valuable plot for a meager amount. Keeping in view the findings in respondent's suit that no amount was disbursed to LGI under agreement dated 18.02.1987, the suit for damages filed by LGI was decreed by the Banking Court. Against such decree also the respondent Bank filed appeal. Both the appeals, one filed against dismissal of respondent bank's recovery suit and the other filed against award of damages in the suit filed by LGI,

were clubbed together and allowed by the High Court vide impugned judgment dated 18.01.2008. Aggrieved by such decision, the present appeals were preferred.

3. Learned counsel for the appellants argued that the evidence shows that after execution of the finance agreement dated 18.02.1987 no amount was disbursed, yet the plot valuing millions of rupees was sold for a meager amount of Rs.400,000.00 and the proceeds of insurance policy were appropriated by the respondent bank, therefore, the Banking Court rightly awarded damages to LGI. He next submitted that the evidence of the respondent bank also disclosed contradiction in the pleadings which was also ignored by the High Court as it was deposed by bank's witness that the finance in dispute was sanctioned by the State Bank whereas in his cross-examination it was admitted that the finance was never sanctioned by State Bank. He, therefore, contended that while deciding the appeals, the Division Bench of the High Court erred in decreeing the suit of the respondent bank and dismissing the suit of the LGI by misreading the evidence on record, which decision is liable to be reversed.

4. In rebuttal, learned counsel for the respondent bank though conceded that no amount was disbursed after the execution of the agreement on 18.02.1987 but it was explained that this agreement was intended to cover LGI's obligation towards Part-I of the Export Refinance Scheme availed by it on 27.08.1986 as well as the penalty which was imposed by the State Bank on 25.09.1986 on account of LGI's failure to meet export target under previous Part II of the Export Refinance facility. Against both the heads, State Bank had issued a debit voucher to the respondent bank and in order to settle State

Bank's above-referred claim against LGI and keep its account regularized, the respondent bank at the request of LGI sanctioned the financial facility of Rs.675,000.00 on 25.01.1987. Thereafter, agreement of finance along with other security documents were executed on 18.02.1987 and Rs.675,000.00 were credited to the account of LGI and from this account, State Bank's outstanding claim for Rs.671,841.00 was settled. He submitted that this also explains the innocuous contradiction of respondent bank's witness as to which of the two sanctioned the finance i.e. the State Bank or the respondent bank. He further submitted that there was also an admission in a letter written by LGI to respondent Bank on 12.05.1987 that a sum of Rs.640,324.00 was still payable and proposed that Rs.450,000.00 would be adjusted from the sale of the mortgaged plot and the remaining balance from the proceeds of the insurance policy assigned to the respondent bank as well as from the sale proceeds of the pledged stock. Learned counsel for the respondent bank maintained that in this background the High Court rightly allowed the appeals.

5. It has come in evidence that between the years 1984 and 1986 LGI had been availing various financial facilities under Part-I and Part-II of State Bank of Pakistan's Export Refinance Scheme through respondent bank's Saddar branch, Karachi. The Export Re-Finance Scheme allows the exporters to avail finance from State Bank to finance their exports, which is adjustable against export proceeds. In case no exports are made or there is a shortfall, the State Bank imposes penalty. The last of the Export Refinance facilities availed by LGI from State Bank was on 27.08.1986 bearing No. R-39/U-74 to the extent of Rs.548,400.00 which was to be adjusted in 150 days against the export proceeds i.e. by 24.01.1987. A shortfall in exports under

the previous Part-II of Export Refinance facility had also occurred in the meanwhile that resulted in imposition of penalty on 25.09.1986 by State Bank to the tune of Rs.123,441.00. Thus, in all, a sum of Rs.671,841.00 (Rs.548,400.00 availed under Part I of Export Refinance facility No. R-39/U-74 plus Rs.123,441.00 towards State Bank's penalty against Part I of Export Refinance facility) became due and payable by LGI to the State Bank on account of LGI's failure to meet its export target. In LGI's letter dated 24.11.1986 to the State Bank, the shortfall in exports and the resultant imposition of penalty has been duly acknowledged. In fact in this letter, LGI requested the State Bank to waive the penalty on account of loss of export orders. So it was solely on account of LGI's failure to export leather garments promised under Export Refinance Scheme that the State Bank *perforce* recovered Rs. 671,841.00 from the respondent bank through which the Export Refinance facilities were being availed by LGI. Thus it becomes abundantly clear that the financial facility of Rs.675,000.00 was sanctioned by respondent bank on 25.01.1987 for no other purpose except to facilitate LGI to adjust Rs.671,841.00 which it owed to the State Bank. Ultimately, it was from the financial facility of Rs.675,000.00 that Rs.671,841.00 were paid to the State Bank of Pakistan on 18.02.1987 on behalf of LGI.

6. The above factual position becomes even more clear when LGI's statement of account bearing No. 9014-6 (available at page 318 of the Paper Book) is scrutinized. The account No. 9014 was opened on 18.02.1987 not at the instance of LGI but was necessitated due to change over to computerized banking. In this account, LGI's credit balance of Rs.814.08 from its previous current account No. 3708 which was being made inoperative was transferred. In paragraphs 5 and 7 of the plaint in the suit bearing No. 773 of 1998, LGI has itself

acknowledged that its current Account No. 3708 which had a credit balance of Rs.814.08 became inoperative on 17.02.1987. Account No. 9014 further shows that on 18.02.1987, i.e. the day when the agreement of finance was executed, a sum of Rs.671,841.00 was debited. This debit entry reflects the payment made by the respondent bank to the State Bank on LGI's behalf covering Rs.548,400.00 availed by LGI under Part I of Export Refinance facility from State Bank on 27.08.1986 and Rs.123,441.00 being penalty imposed by State Bank on account of short fall in LGI's exports under Part II of the Export Refinance facility availed earlier. Then there are three debit entries of Rs.60,324.00, Rs.7,080.44.00 and Rs.6,246.00 dated 24.06.1987, 30.06.1987 and 27.10.1987 respectively, all reflect payments made against State Bank's penalty. There is a debit entry of Rs.103,335.00 dated 30.06.1987 towards charging of markup. Then there is a credit entry of Rs.29,275.80 dated 18.03.1987 in the statement of account which is downward adjustment of State Bank's penalty that was originally charged to the extent of Rs.123,441.00 on 25.09.1986. As against the recovery made by respondent bank against assignment of life insurance policy, a credit entry to the extent of Rs.138,455.00 also appears on 22.09.1987. Then there is a credit entry dated 22.11.1987 for a sum of Rs.400,000.00 which represents the amount recovered against the consented sale of the mortgaged plot. It may be pointed out that LGI in its letter dated 12.05.1987 had itself stated that the outstanding amount would be liquidated from the proceeds of insurance policy assigned to the respondent bank and from the sale proceeds of the mortgaged plot. LGI for four long years never protested against adjustment of proceeds of insurance policy and sale of mortgaged plot. Only in the written statement filed in the recovery suit on

15.10.1991 that LGI took the stand that no finance was availed under the agreement of finance dated 18.02.1987. After adjustment of above-referred entries in the statement of Account No. 9014-6, a debit balance of Rs.261,775.96 finally remained outstanding against LGI on 01.03.1989 and this was the amount for which respondent bank filed recovery suit in Banking Court in 1989.

7. From the above, it is abundantly clear that in fact the agreement of finance dated 18.02.1987 for Rs.675,000.00 was executed to regularize the amount which the respondent bank had to pay *perforce* to the State Bank of Pakistan on 18.02.1987 on behalf of LGI. In the evidence neither Rs.548,400.00 availed by LGI from State Bank against Part I of the Export Refinance Scheme nor the penalty imposed by State Bank against Part II of such facility availed earlier was denied. In fact the same was acknowledged by LGI in its letters dated 24.11.1986 and 12.05.1987. We have also noted that in letter dated 12.5.1987, LGI had also acknowledged that there was an outstanding balance of Rs.640,324.10. This is exactly the outstanding balance, which appears in the statement of account No. 9014-6 as on 03.04.1987. The plea of LGI that no finance was disbursed after execution of the finance agreement dated 18.02.1987 for Rs.675,000.00 was though correct but it became quite evident from the evidence discussed above that said agreement was executed so that the finance is availed from respondent bank to settle Rs.671,841.00 owed by LGI to the State Bank. In this background, the plea that no amount was disbursed after the finance agreement was executed on 18.02.1987 is of no legal consequence.

8. Taking into consideration the admissions made by LGI in its letters dated 24.11.1986 and 12.05.1987 as well as the entries contained in LGI's bank statement of account No. 9014-6, the Division Bench of the High Court while deciding both the appeals vide impugned judgment rightly decreed the suit for recovery filed by respondent bank and dismissed the suit for damages filed by LGI. These appeals having no merit are accordingly dismissed.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
2nd of May, 2017
Not Approved For Reporting
Khurram