

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

R.F.A.No.07 of 2018  
M/s Cavalier Enterprises (Pvt.) Ltd. and others  
**Versus**  
Allied Bank of Pakistan

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	18.05.2022	<b>Mr. Imran Khan Jadoon, Advocate for the appellants</b> <b>Mr. Mir Aurangzeb, Advocate for the respondent</b>

Through the instant regular first appeal, the appellants, M/s Cavalier Enterprises (Pvt.) Ltd. etc., impugn the judgment and decree dated 22.05.2017 passed by the learned Judge Banking Court, Islamabad whereby the suit filed by the respondent for recovery of Rs.73,803,973.95 with costs of funds from the date of default till the realization of the said amount was decreed.

2. It is not disputed that appellant No.1 had availed three finance facilities from the respondent. The first being a running finance of Rs.86 million; the second being a term loan of Rs.20 million; and the third being a letter of guarantee of Rs.40 million.

3. As securities for the said facilities, the appellants had registered a *pari passu* charge by way of hypothecation of all the present and future assets of the respondent including stocks and receivables of the respondent with 35% margin; first charge by way of memorandum of despot of title deed registered with the Securities and Exchange Commission of Pakistan in addition to token registered mortgage of Rs.0.100 million and equitable mortgage on two properties *i.e.*, (i) Industrial Plots No.101 to 103, Industrial Triangle, Kahuta Road, Islamabad, and (ii) Commercial Plots No.6-A and 6-B Civic Centre, New Garden Town Scheme, Lahore, and 10% cash margin on letter of guarantee and counter guarantee of the respondent.

4. The agreement for financing was executed between appellant No.1 and the respondent on 21.01.2010 for a finance facility of Rs.86 million. Appellant No.1 had also executed a demand promissory note in favour of the respondent. Appellants No.2 and 3 executed personal guarantees in favour of the respondent guaranteeing the repayment of the loans / finance to the respondent.

5. On 30.10.2013, the respondent instituted a suit for the recovery of Rs.73,803,973.95 against the appellants before the learned Banking Court at Islamabad. As per the said suit, the principal amount payable to the respondent was Rs.69,790,508.50, whereas the mark up came to Rs.4,013,465/-. The respondent had also claimed the costs of funds till the realization of the decretal amount. A copy of the statement of the accounts in accordance with the requirement of Section 9(3) of the Financial Institutions (Recovery of Finances) Ordinance, 2001. The said suit was filed after the respondent had issued legal notice dated 05.09.2012 to the appellants.

6. The order sheet of the learned Trial Court shows that notices had been issued to the appellants and on 19.12.2013, notices had been issued to the appellants through publication in newspapers. It was not until 27.01.2014 that the appellants filed an application for leave to defend the suit.

7. Perusal of the appellants' application for leave to defend show that as per the appellants' calculation, only an amount of Rs.23,000,000/- was due to be paid to the respondent. It was also pleaded that the appellants' request to re-schedule the finance facility availed by appellant No.1 had been refused by the respondent. The other pleadings in the said application are evasive and lack particularity. In short, the said application does not contain any specific pleading as to what

amount in the finance facility had been repaid by the appellants and on which dates.

8. Vide judgment dated 22.05.2017, the learned Banking Court dismissed the appellants' application for leave to defend the suit primarily on the ground that the said application was barred by eight days and no explanation was given by the appellants for the delay in filing of the same.

9. Since a publication in the newspapers had admittedly been made on 19.12.2013 in order for the appellants to be informed as to filing of the suit by the respondent, the limitation period for filing the application for leave to defend the suit expired on 18.01.2014. Since the said application was clearly barred by eight days. The learned Banking Court did not commit any illegality by dismissing the appellants' application for leave to defend the suit.

10. Now, this Court gave an ample opportunity to the learned counsel for the appellants to satisfy the Court as to why the learned Banking Court should not have decreed the respondent's suit. His attention was drawn by this Court to the petition for leave to defend the suit and he was asked to substantiate and justify the pleadings that as per the appellants the amount due to the respondent was Rs.23,000,000/- and not the amount for which the decree had been passed. Learned counsel for the appellants did not render any assistance on this score.

11. In view of the above, we are left with no option but to dismiss this appeal with no order as to costs.

**(ARBAB MUHAMMAD TAHIR)**  
**JUDGE**

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**