

**Judgment Sheet**  
**IN THE LAHORE HIGH Court, MULTAN**  
**BENCH, MULTAN.**

**JUDICIAL DEPARTMENT**

**R.F.A.No.171 of 2010.**

**Muhammad Azam Khan.**

**Vs.**

**Askari Leasing Limited.**

**JUDGMENT**

**Date of Hearing** **30.09.2013.**

**Appellant By:** **Mr. Muhammad Shehzad Aslam, Advocate.**

**Respondent By:** **Respondent proceeded against exparte.**

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**ABID AZIZ SHEIKH, J:-** This appeal has been filed u/s 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 03.05.2010 passed by learned Judge Banking Court-I, Multan whereby suit for rendition of accounts filed by the appellant was dismissed. The appeal was admitted for regular hearing on 16.03.2011 and notice was issued to the respondent. As per office report, the notice was received by concerned officer namely Ismail at Askari Leasing Bank Ltd. Multan Cant, however, no one has entered appearance on behalf of respondent who is proceeded against exparte.

2. Briefly the facts in this case are that the appellant/plaintiff filed a suit for rendition of accounts against the respondent/defendant

(leasing company) by stating that he obtained vehicle Honda Civic, Colour white, Model 2002, Registration No.VRG-09, on installments with down payment of Rs.2,38,640/-. The loan amount was Rs.11,93,200/- whereas the appellant paid Rs.15,82,840/- till the time of filing of suit. He further claimed that the appellant was paying installments regularly but respondent/defendant was charging illegal mark up and penalties and also took possession of the leased vehicle from the appellant, hence suit for rendition of accounts was filed.

3. The respondent/defendant filed application for leave to defend the suit which was allowed and following issues were framed by learned Banking Court:-

1. Whether the suit is not maintainable under the law? OPD.
2. Whether the plaintiff is defaulter to the tune of Rs.5,81,231/- as on 01.07.2006? OPD.
3. Whether the plaintiff is entitled to rendition of accounts, if so, what are the liabilities of the parties? Onus on Parties.
4. Relief?

After recording evidence and hearing learned counsel for the parties, the suit of the appellant was dismissed vide judgment and decree dated 03.05.2010.

4. The learned counsel for the appellant/plaintiff argued that appellant deposited 44 installments and therefore, the respondent/defendant had no authority to repossess the vehicle in question. In response to question that how suit for rendition of accounts was maintainable, it is argued that the appellant was not a defaulter as is evident from the record, therefore, the suit for rendition of accounts was maintainable against the respondent/defendant (leasing company). Adds that the judgment and decree is not sustainable under the law.

6. We have heard the learned counsel for the appellant/plaintiff and perused the record.

7. At the first instance we will dilate upon issues No.1 and 3 regarding maintainability of the suit and entitlement of appellant for rendition of accounts. It is admitted position that the appellant leased a vehicle from the respondent/defendant (leasing company) on the basis of Vehicle Lease Agreement (Ex.D/3) and the payment was to be made in 60 installments as per Repayment Schedule (Ex.D/4). The rights and obligations of the parties were governed under the aforesaid vehicle lease agreement. We have gone through the vehicle lease agreement (Ex.D-3) and could not find any clause, which require the respondent/defendant to render any account to the appellant/plaintiff, rather in Clause 7.1 of the vehicle lease agreement, it is specifically mentioned that respondent/defendant shall not be accountable for any liability. Further, the detail of payable amount is already given in the schedule Ex.D-4 with the vehicle lease agreement Ex.D-3 and as per plaint, the appellant is also aware of the amounts paid by him to the respondent. It is admitted position in the present suit that one-sided payments are made by the appellant/plaintiff to the respondent/defendant, towards the lease rental. A suit for rendition of accounts is an equitable remedy, which is available to the plaintiff only if he is entitled to accounts and has not been given accounts. From this, it follows that such relief would not arise out of mere contractual relationship or because accounts may have to be examined in the course of a suit but in order to bring a suit for rendition of accounts, one has to see that there had been an open current and mutual account. To determine whether suit for rendition of accounts is maintainable, one has to see if it is really a case of debtor and creditor or only a case of mutual obligation, which in the ordinary way results in enforceable liabilities on each side. In a case of accounts where one party never had any demand against the other cannot fall within this purview. For rendition of accounts there ought to be debit and credit on both sides.

8. In the present case, admittedly, it is only the plaintiff who had been making payment of the amounts and could very well note or

ascertain the total amounts paid by them for which they are seeking the rendition of account. For the purpose of maintainability of the suit for rendition of accounts, liability of the other party to render accounts is basic foundation. Such a liability does not exist when the relationship is contractual between the parties, however, it exists when there is fiduciary relationship between the parties as in the case of partners of a firm, guardian and ward, principle and agent, trustee and beneficiary of a trust. In this regard reliance is placed on the law laid down by the August Supreme Court in case of Messrs Friend Engineering Corporation, the Mall, Lahore Vs. Government of Punjab and 4 others (1991 SCMR 2324) wherein it was held as under:-

*“It is to be remembered that liability to render accounts is the foundation for maintainability of a suit for rendition of accounts. Such a liability exists when there is fiduciary relationship between the parties as in the case of partners of a firm, guardian and ward, principal and agent, trustee and beneficiary of the trust. These instances are only enumerative and under Order XX, Rule 16 CPC, the Court is empowered to pass a preliminary decree where it feels necessary that to ascertain the amount due to one party from the other side, the accounts should be taken. But in the instant case, the relationship between the parties is undoubtedly contractual. In such a case, the respondents are not under any obligation to render accounts to the appellant. The work done, the material supplied to the department and the payments received from them by the appellant were within his knowledge. It was, therefore, for him to have ascertained the amount due to him and filed a money suit for recovery thereof”.*

In this context, reliance is also placed on Pakistan International Airlines Corporation Vs. Karachi Municipal Corporation through Chairman/Administrator, Karachi and another (PLD 1994 Karachi 343).

9. In view of above discussion, we are of the opinion that as the relationship between the appellant and respondent/defendant was contractual in nature and not fiduciary, therefore, the suit for rendition of accounts filed by appellant was not maintainable.

10. Since the issues No.1 and 3 have been decided against the appellant/plaintiff and suit for rendition of accounts is not found to be maintainable under the law, we do not feel necessity to discuss and re-evaluate the findings of learned Banking Court on the remaining issues.

11. For what has been discussed above, the suit filed by the appellant/plaintiff for rendition of accounts was not maintainable and therefore, the impugned judgment and decree dated 03.05.2010 does not warrant interference, hence this appeal is dismissed with no order as to costs.

12. Requisitioned record be remitted back to the concerned Court forthwith.

**(Amin-ud-Din Khan)**  
**Judge**

**(Abid Aziz Sheikh)**  
**Judge**

Approved for reporting.

**Judge**