

2017 C L D 757

[Lahore (Multan Bench)]

Before Amin-ud-Din Khan and Masud Abid Naqvi, JJ

MUHAMMAD SHAFIQ and others---Appellants

Versus

BANK OF PUNJAB through Manager and others---Respondents

R.F.A. No.115 of 2011, heard on 14th November, 2016.

Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001)---

---Ss. 9, 10 & 22---Procedure of Banking Court---Statement of Account---Charging of excess markup---Suit for recovery---Application for leave to defend by the defendants was allowed partially, and suit for recovery was decreed partially against the defendants, who were successors-in-interest of the original defendant (now deceased)--
-Contention of the defendants' inter alia was that the plaintiff Bank, while filing the suit, did not fulfil requirements of S. 9(2) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 and that the statement of accounts issued by Bank was not according to law---Validity---Perusal of record revealed that predecessor-in-interest of the defendants had denied the availing of the loan but admitted the execution of documents by seeking exclusion of certain entries from the statement of accounts---
Plaintiff Bank could not explain a discrepancy in the statement of account regarding charging of excess markup---Held, that the defendants were entitled for exclusion and deduction of said amount, and the same was deducted from the decretal amount---
Appeal was allowed, accordingly.

Muhammad Suleman Bhatti for Appellants.

Muhammad Saleem Iqbal for Respondent No.1.

Mian Muhammad Younas for Respondent No.2.

Date of hearing: 14th November, 2016.

JUDGMENT

MASUD ABID NAQVI, J.---Brief facts of this Regular First Appeal are that being a banking company, the respondent bank filed a suit for recovery of Rs.758,873/- along with mark-up against the principle debtor i.e. Mohammad Shafique/defendant No.1/predecessor in interest of present appellants and Haji Sheikh Mohammad Afzal/defendant No.2/guarantor. Only the defendant No.1 filed an application for leave to appear and defend the suit. The learned Banking Court, after hearing the parties partially accepted the application for leave to appear and defend the suit by decreeing the suit to the extent of Rs.680,769/- with costs and cost of funds vide judgment and

decree dated 17.01.2011. Feeling aggrieved of impugned judgment and decree dated 17.01.2011, Mohammad Shafique/defendant No.1 himself filed instant appeal and challenged the validity of the said judgment and decree. During the pendency of this appeal, Mohammad Shafique/defendant No.1 died and present appellants being successor in interest were allowed to proceed with the appeal as appellants.

2. Learned counsel for the appellants submits that while passing the impugned judgment and decree, learned Banking Court failed to appreciate the facts that neither the respondent bank fulfilled the requirements of section 9(2) of Financial Institutions (Recovery of Finances) Ordinance, 2001 nor statement account was/is according to the law. Hence, the application for leave to appear and defend the suit may be accepted. On the other hand, learned counsel for the respondent/bank states that the predecessor in interest of present appellants executed the documents and received finance on his own request but failed to pay off the loan and became defaulter. We have heard the arguments of the learned counsel for the parties and have minutely gone through record as well as the impugned order.

3. Perusal of record reveals that the predecessor in interest of present appellants availed of Kissan Dost Agriculture Finance Scheme (KDAF) and received Rs.500,000/- vide sanction Advice No.NOP/RO/ SH/2005/711/14336 dated 21.04.2005. The documents executed by the predecessor in interest of present appellants i.e. Demand Promissory Note, Agreement of Finance for purchase of Agricultural Inputs, Letter, of Arrangement and Letter of Authority as well as Personal Guarantee executed by Haji Sheikh Mohammad Afzal/defendant No.2 are available on the record along with Zari Pass Book, Charge Certificate and other revenue documents. In his application for leave to appear and defend the suit, although the predecessor in interest of present appellants denied the availing of loan but admitted the execution of documents by seeking exclusion of some entries from the statement of account. It is specifically pleaded in application for leave to appear and defend the suit that the amount charged after one year from the date of disbursement is illegal, unlawful and can-not be charged. Hence, an amount of Rs.292,112 be deducted from the claimed amount as incorporated in statement of account. On query, learned counsel for the respondent has no answer to satisfy this Court regarding the inclusion of certain amount in the statement of account which amounted to Rs.1,55,577/-, markup for the two years excess decreed. Other bald allegations of the predecessor in interest of present appellants have been properly dealt with by the learned Banking Court and even at this stage, the learned counsel for the appellants has failed to show any discrepancy about any other entry in the statement of account except the entries of Rs.1,55,577/-.

4. For the foregoing reasons, we are of the view that the appellants are only entitled for the exclusion/deduction of an amount of Rs.1,55,577/- from the amount as decreed by the learned Banking Court with cost of funds. Consequently, this appeal is partially accepted.

KMZ/M-4/L Order accordingly.