

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Omar Sial

First Appeal No. 64 of 2020**Pak Leather Crafts Limited & others Appellants**

through Ms. Aizeh Bashir, Advocate

vs.

Habib Bank Limited**..... Respondent**

through Syed Aijaz Hussain Shirazi, Advocate

Date of hearing : 07-03-2024

Date of judgment : 18-03-2024

JUDGMENT

OMAR SIAL, J.: Habib Bank Limited filed Suit No. 218 of 2017 against Pak Leather Crafts Limited and its directors for the recovery of a Rs. 33,000,000 finance facility extended to them. The learned trial court dismissed the appellant's Leave to Defend application and decreed the Suit in the Bank's favour on 04.11.2020.

2. We have heard the learned counsels for the parties and perused the record. Our observations and findings are as follows.

3. Learned counsel for the appellants has argued that the Suit was filed by an unauthorised person. We noticed from the record that this argument is not correct. The Suit was filed on behalf of the Bank by Anjum Altaf and Syed Hussam Ashraf Sabzwari. Powers of Attorney executed by the Bank in favour of Anjum Altaf and Syed Hussam Ashraf Sabzwari were filed along with the plaint.

4. Learned counsel for the appellant has argued that the Statement of Accounts annexed with the Plaint were not certified as required by the Bankers' Books Evidence Act, 1891. We noticed from the record that this

argument is not correct. Section 4 of the Act of 1891 provides that “a certified copy of any entry in a banker’s book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.” Section 2(8) of the Act defines “certified copy” to mean “a copy of any entry in the books of a bank together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.” The Statement of Accounts on record shows that it has been verified by Zia-ul-Haq, Manager, FTC Commercial Centre, Karachi and Imran Iqbal, Area Operational Manager, FTC Commercial Centre.

5. Learned counsel for the appellant has argued that the Suit was time barred. This argument too appears to be incorrect. Counsel has computed time from the date the facility was extended to the appellant i.e. 30.04.2009. The Bank through a Legal Notice dated 27.01.2014 had called the default and had asked the appellant to pay back the outstanding amount by or before 30.04.2014. The appellant did not do so and the Suit was filed on 07.11.2014.

6. The last argument raised by the learned counsel which had the most force of all her arguments was that the Statement of Accounts did not reflect the re-payments made by the appellant. The learned counsel for the Bank explained that no amount had been re-paid by the appellant and therefore the Statement does not reflect any further entries. Learned counsel very graciously and honestly conceded that it had not been claimed in the Leave to Defend by the appellant that any amount had been re-paid. In any event what has been awarded to the Bank through the impugned judgment is the principal amount of Rs. 33 million plus the costs of the Suit.

7. We also notice that the mandatory requirements of Section 10 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 were not complied with by the appellant.

8. Although the learned counsel for the appellant argued precisely and eloquently, we find no reason to interfere with the impugned judgment. The appeal is dismissed.

JUDGE

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