

IN THE HIGH COURT OF SINDH AT KARACHI

First Appeal No.87 of 2016

Present: **Mr. Justice Muhammad Iqbal Kalhoro**
Mr. Justice Mohammad Abdur Rahman

House Building Finance Company Ltd.
Versus
Muhammad Hanif Raheel & another

Date	Order with signature of Judge
------	-------------------------------

For hearing of main case.

Date of hearing: 02.10.2025

Mr. Muhammad Aslam, advocate for appellant.
None present for respondent.

J U D G E M E N T

Muhammad Iqbal Kalhoro, J.- Despite various notices, including substitute service by means of publication in two newspapers i.e. Daily Jang and Daily Dawn dated 15.04.2025 and 26.09.2025 respectively, respondent No.1 has chosen to remain absent. He is declared exparte.

2. We have heard learned counsel the appellant. The only point he has impugned the judgment and decree passed in Suit No.8 of 2016 by the Banking Court is that while awarding cost of funds, the Banking Court has not complied with the scheme enunciated in subsection (2) of Section 3 of Financial Instructions (Recovery of Finances), Ordinance 2001. To establish his case, learned counsel for the appellant has stated that appellant had filed a suit before the Banking Court for recovery of Rs.1,492,665/- which was decreed in terms of impugned judgment dated 25.04.2016 but the cost of funds was awarded from filing of the suit and not from the default as required by law.

3. We have read the last paragraph of the impugned judgment. Learned Banking Court while decreeing the suit has observed that the financial facility was sanctioned in the year 2004 but no payment was made by

respondent No.1 till 18.12.2015 when the suit was filed. There is no justification of filing the suit with delay of about 11 years nor any explanation with regard to cost of funds from the date of default has been given. Considering the same, the Banking Court has granted cost of funds from the date of filing of the suit till realization of the decretal amount. However, the said observation palpably is in contravention of subsection (2) of Section 3 of the Financial Instructions (Recovery of Finances), Ordinance 2001 which for the convenience is reproduced hereunder:-

“3. Duty of a customer.-

(1)

(2) Where the customer defaults in the discharge of his obligation, he shall be liable to pay, for the period from the date of his default till realization of the cost of funds of the financial institution as certified by the State Bank of Pakistan from time to time, apart from such other civil and criminal liabilities that he may incur under the contract or rules or any other law for the time being in force.

(3)”

4. The Banking Court while granting cost of funds from the date of filing of the suit was required to give a substantial justification for travelling beyond the scope of the provisions of law. But as is clear from a perusal of relevant observations in the last para of the judgment no reason has been put forth for not awarding cost of funds from the date of default. We, therefore, allow the appeal and modify the judgment and decree in that the cost of funds awarded to the appellant would be from the date of default and not from the date of filing of the suit, as required by law. Let office prepare the modified decree in terms of this judgment.

5. Appeal stands allowed in the above terms.

Dated:

Judge

Judge