

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

FIRST APPEAL NO. 11 OF 2014

Date

Order with signature of Judge

10.11.2015

Mr. Adnan Iqbal Chaudhry, Advocate for the appellant.
Mr. Mohsin Shahwani, Advocate for Respondents.

Through instant appeal the appellant has impugned Judgment dated 16.1.2014 and decree dated 11.2.2014 passed in Suit No. 507 of 2011 by the Banking Court No. II at Karachi, whereby, the Suit filed by Respondent No.1 has been decreed against the appellant/respondents No.2 to 5 (defendants in Suit) jointly and severally in the sum of Rs.17,005,885.60 towards markup and SBP Penalty on Export Refinance Facility, along with cost of funds from the date of default, till realization of the entire decretal amount.

Counsel for the appellant contends that instant appeal has been preferred by the appellant / Guarantor only, who had executed a Guarantee dated 30.12.2002, which was furnished pursuant to a Settlement Agreement also dated 30.12.2002 and per Counsel, the amount in question was to be paid in 48 equal monthly installments ending on 28.2.2007, whereas, instant Suit has been filed in the year 2011 and therefore, the same was hopelessly time barred. In addition to this, learned Counsel contends that the matter was settled between the principal borrower and the Bank for an amount of Rs. 100 Million, on the basis of a Tripartite Agreement between the principal borrower, respondent No.1 and National Bank of Pakistan, whereafter, the entire amount of 100 Million has been paid by National Bank of Pakistan. He has also referred to letters dated 23.11.2002 and 14.12.2002 and contends that the total outstanding liability in these letter(s) has been stated as 100 Million by the respondent Bank and therefore, the Suit filed on the basis of Settlement Agreement to claim the outstanding amount of Rs.17 Million

approximately in relation to Export Refinance Facility/SBP Penalty was based on malafide and without any lawful authority.

Conversely, Counsel for the Respondent No.1 submits that as per the Clause-2 of the Settlement Agreement, the amount in relation to Export Refinance Facility/SBP Penalty was to be paid in 48 equal monthly installments commencing from 1.1.2003 and ending on 28.2.2007, whereas, three months grace period was allowed and an Additional 48 months in repayment of the said amount and therefore, counting from 28.2.2007 the period stood extended for a further 48 months + 3 months and therefore, the Suit was within time in 2011.

We have heard both the Counsel and perused the record. Insofar as the arguments on merits of the appeal are concerned, we are not inclined to entertain such contention, for the reason that no appeal has been preferred by the principal borrower, and therefore, the Guarantor, who is appellant in the instant matter, cannot raise such objections on merits of the case. However, since, the appellant has also raised the question of limitation with regard to the guarantee executed by him; we have entertained instant appeal on this Sole ground.

Insofar as enforcement of the Guarantee executed by the appellant is concerned, it appears that the same was executed pursuant to a settlement agreement dated 30.12.2002. Clause 2(b) whereof reads as under:

(b) Rs. 17,005,885/- Export Refinance/SBP penalty to be paid in 48 equal monthly installments commencing from March 01, 2003 and ending February 28, 2007. Although 3 months grace period has been allowed and an additional 48 months for repayment of said amount, Papa Sierra shall arrange to liquidate this liability at an early date, if possible.

We have examined the aforesaid provision of the Settlement of Agreement dated 30.12.2002, which provides the period for payment of 48 installments and are not inclined to agree with the interpretation as advanced by the Counsel for the respondent No.1, as to our understanding the period of 48 equal monthly installments was required to commence from 1.1.2003 ending till 28.2.2007, and, if the installments were not paid within such period, the bank was at liberty to initiate recovery proceedings. The reference to the words "*although 3 months grace period has been allowed and an additional 48 months for repayment....*" in fact does not refer to any additional grace period in repayment, as according to us, the said

Clause never extended the period from 2007 onwards for a further period of 48 months as contended by the Counsel for respondent No.1, which otherwise appears to be superfluous and is hereby repelled. It therefore follows, that the Suit filed in the year 2011, against the present appellant / guarantor for a default committed in the year 2007, appears to be barred by limitation, having been filed after 3 years period from such default.

In view of such position, we are of the view that the Suit filed by respondent No.1/bank in the year 2011, was time barred to the extent of seeking enforcement /recovery of the amount on the basis of Guarantee executed by the present appellant. In such circumstances, instant appeal is allowed, to the extent of present appellant and in respect of Guarantee so executed by the appellant, whereas, insofar as other Judgment debtor(s) are concerned, the respondent No.1/bank is at liberty to proceed with the execution proceedings against them in accordance with law.

Appeal stands allowed in the above terms.

JUDGE

JUDGE