

**ORDER SHEET**  
**HIGH COURT OF SINDH, KARACHI**

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I.A. No. 26 of 2014

<b>Date</b>	<b>Order with signature of Judge</b>
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**Present**

**Mr. Justice Muhammad Ali Mazhar.**

**Mr. Justice Agha Faisal.**

Standard Chartered Bank (Pakistan) Ltd.....Petitioner

Versus

Mst. Asma Mansoor.....Respondent

**Date of hearing 02.04.2019**

Mr. Faheem Iqbal advocate for the appellant

Mr. Adil Khan advocate holding brief for Qazi Hifz-ur-Rehman  
advocate for the respondent.

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**Muhammad Ali Mazhar, J:** This appeal has been preferred under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 by the Standard Chartered Bank (Pakistan) Ltd.

2. The brief facts of the case are that the appellant filed suit under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 against the respondent for the recovery of Rs. 515,315.48 along with cost of funds till realization of the entire decretal amount.

3. Learned counsel for the appellant argued that the respondent signed application form and accepted the terms and conditions mentioned therein for availing the financial facility through credit card and the respondent was issued

credit card No.4289-2211-3680-8629 by the appellant. The respondent availed the facility of credit card but failed to discharge his liability in the sum of Rs.515,315.48/-. The notices were issued to the respondent by the Banking Court No.II at Karachi and vide order dated 21.11.2012 the leave to defend application filed by the respondent was dismissed, albeit on the grounds of non prosecution, and parties were directed to file their respective detailed of account/breakup. After considering the statement of account, the learned Banking Court vide order dated 19.02.2014 dismissed the suit. The concluding paragraph of the order is reproduced as under:-

**“4. I have heard the learned counsel for the parties and have also perused the entire material available on record including the statement of account, which shows that the defendant has availed and utilized credit card facility to the extent of Rs.1,121,555.48. Against the said facility, the defendant has paid a total sum of Rs.1,122,260/- and reversed an amount of Rs.46,249/-, and thereby a sum of Rs.47,133.52 has been paid in excess. Although the plaintiff has claimed service charges and 20% liquidated damages but apart from the fact that the said charges have not been borne out from the declaration contained in the application form, the same otherwise appear to be unjustified as there is no separate agreement for the purpose, and thus such request of the plaintiff can not be acceded to. Accordingly the suit of the plaintiff bank is dismissed against the defendant with no order as to costs as the defendant has made an amount of Rs.47,133.52 is in excess.”**

4. It is an admitted fact that the respondent utilized credit card facility to the extent of Rs.1,121,555.48 and paid a sum of Rs.1,122,260/- and in addition thereto the Bank made a reversal entry for an amount of Rs.46,429/-, which was paid in excess. After considering the material facts the learned Banking Court dismissed the suit with no order as to cost on the ground that the respondent has already made an excess payment of Rs.47,133.52. Learned counsel argued that the

respondent was liable to pay the services charges and 20% liquidated damages which element has not been considered by the Banking Court. While the learned Banking Court had considered the claim of service charges and liquidated damages and disallowed the same, as is manifest from the impugned judgment, it was observed from the record before us that the suit has been filed under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, however, the mandatory requirements emanating from sub-section (3) of Section 9 of the Ordinance, 2001 were conspicuously absent from the plaint filed in the suit. For the sake of expediency the relevant provision is reproduced as under:-

**(3) The plaint, in the case of a suit for recovery instituted by a financial institution, shall specifically state---**

**(a) the amount of finance availed by the defendant from the financial institution;**

**(b) the amounts paid by the defendant to the financial institution and the dates of payment, and**

**(c) the amount of financial and other amounts relating to the finance payable by the defendant to the financial institution up to the date of institution of the suit.**

5. We have also examined the plaint filed by the appellant in the banking court but it is clear from the contents of plaint that the appellant failed to fulfill the requirements stipulated under sub-section (3) of Section 9 of the aforesaid Ordinance. On the contrary learned counsel sought to rely upon a break up filed in the suit in order to justify his claim. It is our view that document rely upon is not even a statement of account and in any event it does not satisfy the mandate of Section 9

of the aforesaid Ordinance. Apparently, this is a case in which an excess amount was paid, therefore, in our view the impugned order does not warrant any interference, hence this appeal is hereby dismissed.

JUDGE

JUDGE

Aadil Arab