

## JUDGMENT SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

First Appeal No.D-16 of 2012

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Appellant : Syed Muhammad Nadeem Shah Bukhari,  
through Mr. Jagdish R. Mullani advocate.

Respondent : Standard Chartered Bank (Pakistan) Ltd.,  
through Mr. Ghulam Murtaza Shaikh advocate.

Date of hearing : 14.11.2019.

Date of decision : 14.11.2019

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### J U D G M E N T

**NADEEM AKHTAR, J.** Through this appeal under Section 22 of Financial Institutions (Recovery of Finances) Ordinance, 2001 (**'the Ordinance'**), the appellant has impugned judgment and decree dated 17.05.2012 passed by learned Banking Court-II Hyderabad in Suit No.19/2011, whereby the said Suit filed the respondent-bank against the appellant was decreed against the appellant in the sum of Rs.16,241,373.74 with cost of funds thereon from the date of default till satisfaction of the decree.

2. Relevant facts of the case are that the above Suit was filed by the respondent against the appellant for recovery of Rs.19,489,648.49 with cost of funds thereon, liquidated damages and costs of the Suit. It was the case of the respondent that a finance facility of Rs.13,500,000.00 was granted by the respondent to the appellant which was availed / utilized by the latter, and in consideration of the said facility and as security for repayment thereof, the appellant mortgaged in favour of the respondent an immoveable property viz. Plot No.378, measuring 1,483 sq. yds. (13,347 sq. ft.), Block-B, Unit No.4, Shah Latifabad, Hyderabad. It was alleged by the respondent that the appellant did not adhere to the repayment schedule and committed default in payment of the agreed installments. According to the statement under Section 9 of the Ordinance made by the respondent in its plaint, an amount of Rs.1,835,710.00 was paid by the appellant and the balance amount payable by him was Rs.19,489,648.49. The appellant filed an application for leave to defend which was dismissed by the learned banking court vide order dated 17.05.2011. Thereafter, the learned banking court proceeded to

examine the claim of the respondent and decreed the Suit in the above terms.

3. It is contended by learned counsel for the appellant that the Suit filed by the respondent was not maintainable as no notice was issued to the appellant prior to the filing of the Suit. The second submission by him is that the plaint of the Suit was signed and verified by one Aijaz Hussain claiming to be the attorney and authorized representative of the respondent-bank on the basis of a power of attorney executed in his favour on 29.09.2008 by one Badar Kazmi, the Chief Executive Officer of the respondent. According to him, the respondent-bank had delegated such authority to the said Badar Kazmi by granting power of attorney in his favour on 01.11.2008. It is contended by him that the purported power of attorney executed by the said Badar Kazmi in favour of the said Aijaz Hussain on 29.09.2008 was void as the former did not have power to execute the same on the date of its execution, and as such the Suit was filed without lawful authority. In support of his second submission, learned counsel placed reliance upon Messrs Ittefaq Industries (Regd.) through Managing Partner and 2 others V/S Bank of Punjab through duly constituted attorney, 2004 CLD 1356.

4. Regarding the first contention of the learned counsel, it may be observed that the respondent was not obliged under the law to issue a legal notice to the appellant prior to the filing of the Suit. In order to invoke the jurisdiction of the banking court under the Ordinance, the plaintiff financial institution or customer, as the case may be, only has to show that cause of action has accrued in terms of the Ordinance for filing the Suit ; and, to establish and substantiate the cause of action, allegation(s) in the plaint regarding default by the defendant in fulfillment of any of the obligations under the agreement, duly supported by relevant documents, would be sufficient. Perusal of the plaint shows that the respondent had specifically pleaded default in payment of the agreed installments by the appellant which clearly constituted cause of action in its favour for filing the Suit. Thus, the above contention of the learned counsel has no force.

5. We have examined the above mentioned power of attorney referred to by the learned counsel which clearly shows that it was executed by the said Badar Kazmi, Chief Executive Officer of the respondent-bank, on 15.07.2009 and not 27.09.2008 as claimed by the learned counsel. The latter date is the date of purchase of the stamp paper, whereas the former one is the actual date of execution of the power of attorney in favour of the said Aijaz Hussain. The case of Messrs Ittefaq Industries (supra) relied upon by the learned counsel is not relevant to the facts and circumstances of the present case. In

view of the above, this ground urged on behalf of the appellant cannot be accepted.

6. After carefully examining the impugned judgment and decree, we are of the considered view that the same do not suffer from any infirmity or illegality. In fact, while decreeing the Suit the payments made by the appellant were deducted from the respondent's claim by the learned banking court and liquidated damages claimed by the respondent were declined. In the above circumstances, the impugned judgment and decree do not call for any interference by this Court. Accordingly, the appeal and listed application are dismissed, however, with no order as to costs.

JUDGE

JUDGE

