

Judgment Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Ist Appeal No. D – 26 of 2018

Before:

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Zulfiqar Ali Sangi

Appellants: M/s Ali Traders & another, through
Mr. Faheem Majeed Memon, Advocate.

Respondent: Askari Bank Limited, through
Mr. Muhammad Habib Khan, Advocate.

Date of hearing: **13-01-2022**

Date of decision: **13-01-2022**

J U D G M E N T

Muhammad Junaid Ghaffar, J. – This Appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (“Ordinance”) has been filed against judgment and decree dated 25-05-2018 and 26-05-2018, respectively, passed by the learned Judge of Banking Court-I, Sukkur in Suit No.31 of 2018, whereby the Suit has been decreed.

2. Heard learned Counsel for the Appellants and for Respondent.

3. The Appellants’ Counsel has raised an objection to the effect that proper account statement was never annexed with the plaint, and further, the same is also not in accordance with the requirements of the Bankers’ Books Evidence Act, 1891. However, it appears that in the leave to defend application, the availing of the finance facility has not been denied; rather it has been stated that the amount was fully repaid. While confronted, Counsel for the Appellants could not refer to any supporting document to this effect; whereas, perusal of the account statement as well as the record reflects that the facility was a Running Finance facility, and from time to time, the Appellant was withdrawing and depositing the amount and the entire statement never reflects that the availed facility was ever fully paid. Moreover, the Appellants Counsel while arguing has also relied upon the same account statements on which an objection has been raised, whereas, the Appellant has by itself not filed any other account statement. In that case, it does not seem to be justified to raise objections on the veracity of

the said statement. The Account statement has debit and credit entries including the markup, and once the overdraft was fully availed to the extent of Rs.0.8 Million, the Appellant defaulted and never made any further payments. As to markup, a separate statement was placed before the Banking Court as a breakup of account, and therefore, the objections raised by the learned Counsel for the Appellants are not only misconceived, but are also not supported with any cogent material.

4. As to the objection regarding non-disclosure of the details in the memo of plaint, it may be observed that since this was a Running Finance facility, and very clearly, it has been mentioned in Para No.13 of the plaint as to the total amount availed; and the due markup, which appears to be fully in compliance with the requirements of section 9 of the Ordinance, 2001; hence, this objection also appears to be misconceived.

5. Lastly, as to the statement being in contravention of the Bankers' Books Evidence Act, 1891, this objection also appears to be misconceived, as on perusal of the same, it reflects that the same was duly signed and stamped to this effect; whereas, even otherwise, the finance facility was never disputed and the Appellants had failed to discharge the onus so defined in terms of Section 10(4) of the Ordinance, in which the requirement is to state the amount of finance availed; the amount paid along with dates of payments; and the amount if any which the borrower disputes as payable to Bank. In fact from perusal of the record reflects that no single document was annexed with the leave to defend application to support the stance taken by the Appellants, and therefore, no case is made out; hence, the Appeal has no merits and is therefore **dismissed** with pending application(s).

J U D G E

J U D G E

Abdul Basit